CRITICAL REVIEW

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AFTER LIBERTARIANISM

A FUTURE FOR LIBERTARIANISM?
Richard Cornuelle

LIBERTARIANISM VS. POSTLIBERTARIANISM
Jan Narveson

MINIMAL STATISM AND METAMODERNISM
Donald N. McCloskey

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IN DEFENSE OF POSTLIBERTARIANISM
Jeffrey Friedman

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PLUS: D.T. Armentano vs. F.M. Scherer on antitrust

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From the Publisher

When we started CRITICAL REVIEW in 1986, we had no idea that it would ever be as successful as it has already become. At over 2000, our paid circulation is more than double the highest level we had hoped for. At 160 pages per issue, we publish nearly twice as many pages each year as we had planned. More importantly, those pages meet the highest scholarly standards, and they have made a real contribution to bringing neoliberal thought into a mutually constructive critical dialogue with other intellectual currents.

Along with these successes have come greater burdens than we imagined. A journal of this size requires someone with more time to devote to its promotion and fundraising needs than I have to give. This long-standing problem has finally been solved through the involvement of Richard Cornuelle in CRITICAL REVIEW. Dick is eminently qualified to publish a journal of political and social thought. A public intellectual himself—the author of *Reclaiming the American Dream* (Random House, 1965), *De-Managing America* (Random House, 1975), and *Healing America* (G. P. Putnam's Sons, 1983)—Dick was an administrator of the William Volker Fund, for years the only source of support for libertarian scholarship and the forerunner of today's Institute for Humane Studies. Later he founded the Center for Independent Action to organize non-governmental alternatives to federal programs. The Center's most successful offspring was United Student Aid Funds, a non-profit organization which guaranteed tuition loans to college students who were otherwise ineligible for commercial credit. Competing head-on with the ill-conceived federal student loan program of 1958, USAFunds met the national need for guaranteed student loans—until federal coverage was extended from the poor to the broad middle class. Dick was also a pioneer in non-governmental programs to employ the supposedly unemployable, to provide low-cost housing, and to undertake urban renewal. He is a doer as well as a thinker, suiting him admirably for his new role as President of CRITICAL REVIEW.

I am proud and happy to hand over the reins to Dick Cornuelle as of January 1, 1993. I urge those with the means to support his efforts to join me on the Critical Review Committee, a group of major financial backers of CRITICAL REVIEW's new non-profit, tax-exempt parent entity, the Critical Review Foundation. Please feel free to contact me or Dick in order to participate.

—*Howard S. Rich*
New York City, December 1992

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Richard Cornuelle

THE POWER AND POVERTY OF LIBERTARIAN THOUGHT

In the late 1940s, I went to New York City, fresh from college, to study with Ludwig von Mises, the intrepid Austrian scholar who had, thirty years before in 1920, fully explained the inevitability of the eventual collapse of the socialist economies. The socialists had sent the celebrated Polish economist Oskar Lange into the lists against him, and while Mises clearly won the encounter on points, such was the emotional appeal of communism's promise to set right the alleged iniquities of a capitalist order that Lange was lionized and Mises became something of a pariah.

It was a dark hour for the libertarians, and for Mises, their unanimously acknowledged intellectual godfather. In those days libertarian ideas were considered not just unfashionable but pernicious. Mises's place in the public consciousness, if he had one at all, was in socialist demonology. He was teaching part-time at the Graduate School of Business Administration at New York University because that was the only job he could get. His distinguished student, F.A. Hayek, who would win a Nobel prize in 1975, had been turned down by the Department of Economics at the University of Chicago and a number of other institutions. Hayek had finally found a place at Chicago's Committee on Social Thought after an obscure Mid-

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Richard Cornuelle, 125 West 11th Street, New York, NY 10011, the publisher of CRITICAL REVIEW as of January 1993, is the author of *Reclaiming the American Dream*, 2nd ed. (Transaction, 1993). A shorter version of this article appeared in the *Times Literary Supplement*, April 5, 1991.

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western foundation, realizing that libertarian scholars were becoming extinct, had arranged to pay his stipend.

When I joined Mises's seminar, it was meeting twice a week in the late evening in a low-ceilinged cellar room, as befitted an underground movement, in the shadow of Trinity Church in lower Manhattan. We were usually about a dozen. Mises arrived last, always on the stroke of the appointed hour, impeccably dressed. He took a single page of notes in German from a small envelope, grasped the edge of the table with his palms flat on the top and his thumbs under, and spoke without interruption for an hour and a half, in a kind of accented chant as if he were reciting scripture from memory. Then there were questions, which he usually answered by repeating, almost word for word, the part of his recitation the question suggested. His method seemed entirely appropriate. We sensed we were in the presence of a towering and uncommonly disciplined intelligence, martyred and misunderstood. We knew Mises had paid dearly for his beliefs. When his monumental *Human Action* was published in 1949, the year I joined the seminar, the *New York Times Book Review's* reaction was to reproach the Yale University Press for publishing it. This sort of thing, of course, only intensified our devotion. We would, except for the practical difficulties, have carved our notes in stone.

So if the collapse of communism caught the CIA and others unawares, it was certainly no surprise to the students of Mises's N.Y.U. seminar. We had been expecting it for forty years. With a confidence no less certain because we had acquired it fortuitously, we knew socialism was doomed and we knew why.

Now everyone knows what we knew; the one big thing the libertarians knew and could explain better than anyone else—that the invisible hand of the market is a more reliable organizer of the economic life of nations than the visible hand of the state—is suddenly the newest universal. The collapse of the communist economies has at last put to rest one of the great unsettled questions of modern times, which absorbed an unreasonable share of the world's intellectual energy for nearly a century. Libertarians had it right from the very beginning.

The assimilation of this enlightenment into everyday affairs will be a long and uncertain process. It may take years, for example, for the people of the Russian republics to accept the idea that the acquisitive private vices they have been conditioned for three generations to repress must now be indulged in the public interest. But socialism is dead, its ponderous "how-to" literature has become waste paper, and history has exonerated libertarian scholarship.

The irony is that while the libertarians waited nearly a century for acceptance, the sun shone on them for only a moment. Their central

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proposition was promptly absorbed into the conventional wisdom and is no longer interesting. Now the unsettled questions are in new and less familiar territory. The dialogue is shifting to ground for which, regrettably, the libertarians are no better prepared than anyone else.

Libertarian thought is wonderfully sound as far as it goes but there are two gaping holes in it that are now taking on a decisive importance. For one thing, there is no very distinct libertarian vision of community—of social as distinct from economic process—outside the state; the alluring libertarian contention that society would work better if the state could somehow be limited to keeping the peace and enforcing contracts has to be taken largely on faith. Nor have libertarians confronted the disabling hypocrisy of the capitalist rationale which insists that while capitalists must have extensive freedom of action, their employees may have much less. Their analysis of how an invisible hand arranges economic resources rationally without authoritarian direction stopped short at the factory gate. Inside factories and offices, the heavy, visible hand of management continues to rule with only token opposition.

The repudiation of communist economics is shifting the intellectual action from a battle in which the libertarians held the high ground to one where they hold no ground at all. From the beginning and almost to the end, communism drew its legitimacy from its ends rather than its means, from the powerful echo of its original promises to protect ordinary people from the hazards of life in a capitalist society. Large numbers of working people and their intellectual surrogates still feel in their bones that an unfettered free market is a jungle, that workers do not get their fair share of what they produce, that capitalism so degrades and disorients working people that they cannot make mature decisions about their own welfare, that it pollutes the streams and waters the whiskey, that it creates an acrid social atmosphere in which the smell of money works its way indelibly into the fabric of everything, that it leaves undone or poorly done all the things a good society needs most, and finally that capitalism is given in its nature to large arrhythmic spasms, and that the burden of this abiding economic insecurity falls primarily on working people.

In fact, the essentials of this nightmare were most brutally realized in the Soviet Union where the members of a new ruling class lived like Western rock stars on unearned income and the simplest human and material requirements of ordinary people were ignored entirely. Economic insecurity, far from being eliminated, was collectivized. And after a while the theory of worker control was small comfort to workers in rigidly regimented and politicized workplaces. But in spite of these disappointments, the belief in the propriety of the Marxian indictment of capitalism persists with a remarkable intensity, certainly in the East and to a considerable

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extent everywhere. The Marxian prescription, or at least its economic ingredient, may be in disrepute, but Marx continues to control the social agenda from his grave in Highgate.

In this context, the Soviet debacle is simply the victory of the reformers of the left over the revolutionaries of the left, settling once for all the historic tactical debate whether to tame capitalism or replace it. The supporting premise of the reformist view is that Marx's analysis of the perils of capitalism is more or less correct, but that the way to right these alleged wrongs is not to overthrow capitalism but to domesticate it—treating it like one of those factory-produced chickens, giving it just enough freedom of movement to stay a little healthy, and just enough nourishment to get a little fat—and then use the wealth it produces to provide whatever working people need and are too poor or improvident to provide for themselves. This is the new consensus: democratic political institutions, a closely watched and guided market economy, and a welfare or service state with a broad charter to keep the society fair and fit for human habitation. This now fashionable arrangement is to be found with only superficial variations throughout the industrialized world, in countries as culturally diverse as Japan, Sweden, England and the United States.

This "system," to which the newly non-Communist nations are thoughtlessly gravitating—variously called social democracy, democratic socialism, or market socialism—is the only game in town, but it is everywhere, and particularly in the United States, showing signs of strain. Eastern European countries may only have jumped out of the fire and into the frying pan. They, along with the rest of the developed world's democracies, are staring down the barrel of the same *non sequitur*: if it is true that the state is bound by its nature to bungle the business of making steel or shoes, what makes us think it is any better at the vastly more complex responsibilities of the modern full-service state: educating the children, providing pensions and health care, eliminating unemployment, protecting depositors from the imprudence of their bankers and providing hundreds of other services, presumably necessary but beyond the reach of the market, not just for the few who have been left behind, but for practically everyone?

In fact, the incompetence of the state as social engineer is by now almost as well documented as its incompetence as economic manager. The 1930s and 40s produced a large, ardent literature that imagined the boundless possibilities of activist government. The 1960s, 70s and 80s produced a literature of an entirely different sort—sadder, saner, sometimes hair-raising chronicles of the failures of the state's efforts to improve society. In the United States, the early work in this genre was done by a handful of libertarian and conservative scholars. In time, they were joined by many

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of their former "liberal" adversaries—those Irving Kristol said had been mugged by reality. They became the born-again conservatives, the "neo-conservatives." One by one, disillusioned liberals defected, wrote a penitential monograph about how this or that promising government program had failed in practice, until their ranks were so nearly emptied of objectivity and common sense that one of their number called for a new, "rational" liberalism and thus gave birth to "neo-liberalism," which joined in the fun. Now the literature documenting the failure of state action has become almost as immense, impenetrable and depressing as government itself.

Thus the American service state, our not very original version of social democracy, an undertaking now at least three times as large as the whole Soviet economy, is no longer sustained either by logic or any record of practical success. It is becoming clear that we have confused the state's blustering eagerness to take responsibility with an innate capacity to exercise it. The American service state survives and flourishes only because an invincible political majority is convinced that its failing programs must be continued because they are essential and because there are, or seem to be, no alternatives. The so-called Reagan revolution was bogus—a disguised tax revolt. It was not an effort to repeal the service state but to preserve it—and to substitute debt or inflation for taxation as a way of paying for its politically irreducible costs. But the illusion that gave the Reagan program its ephemeral plausibility has already faded and America's social democracy is in a bind from which there is no apparent escape. The status quo is impossible to defend and impossible to change. The American polity has reached a kind of dead end, and libertarian thought, in its present state of development, doesn't help.

Thanks in large part to libertarian scholarship, there is a well-understood alternative to the strictly economic half of the traditional socialist program: state operation of the nation's economic institutions—its farms, factories, banks, and power plants. In this sector, libertarians know what they are for. A highly developed literature explains precisely why a centrally planned economic can't work, but it also explains with a practiced clarity how free markets do work and why. There is a well-travelled pathway to change. If a nation decides to desocialize its mail service or its rum distilleries, it can issue shares and sell them outright to the public or it can decriminalize competition and stop subsidizing the state operation. Libertarians can demonstrate how competitive services would come into being overnight and why, in time, they would work better and cost less than the state system they had replaced. Given the political will, privatizing partial socialism in countries where free capital markets exist, as Mrs. Thatcher and others have demonstrated, is a comparatively straightforward business.

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Privatizing the other half of the socialist program, the social services that remain when the last state enterprise has been privatized—the part that is practically indistinguishable from the democratic West's social service states—is a task of an altogether different order. If there are alternatives to the state's failing efforts to get rid of Skid Row, eliminate involuntary unemployment, eradicate illiteracy, provide reasonable pensions, treat the indigent sick, detoxify the environment, among a thousand other problems that beset and perplex an industrial society, there is only the dimmest awareness of them, and certainly no confidence that they would work. (That is one of the reasons Americans sound so confused when they talk to opinion pollsters, saying in the same breath that government programs are failing miserably and ought to be expanded.)

Here, libertarians can respond only by stretching market theory beyond its natural limits. They understand economic process; increasingly they understand political process (libertarian James Buchanan won a Nobel prize in economics for his work in public choice theory); but their understanding of *social* process is scarcely developed at all. Thus the service state is immune to libertarian thought in its present, unfinished condition. However, there is gathering evidence that there are half-forgotten, potentially powerful, largely dormant social forces in society that might, in time, become a serious alternative to state social action. This dimension of society is practically begging to be rediscovered, explored, and understood. It has a glorious past, an ambiguous present, and possibly a considerable future.

Before America's Great Depression, after a century and a half of remarkable growth, there was a formidable alternative to government action for almost every aspect of the public business from disease control to economic stabilization. Tocqueville had considered this habit of aggressive and imaginative voluntary action in the public interest—neither commercial on the one hand nor governmental on the other—the most distinctive and promising aspect of the developing American polity. When the crash came in 1929, this third dimension or "sector" of society (now increasingly called the "independent" sector) had become so large and complex as to be literally indescribable in any reasonable space. Nor had anyone catalogued its elements or assessed its total contribution to the general welfare. Even now, the organizations of the independent sector are waiting to be counted and classified.

America's overall institutional landscape consists of one federal government, fifty state governments, and, at last count, about 80,000 local governments of various shapes and sizes. There are more than ten million commercial entities, ranging from bootblacks and pushcart peddlers to giant conglomerate corporations. And running through and among and

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around all these like glue are the institutions of this third, independent sector, several million of them altogether. The variety of their purposes is staggering. There are hundreds of universities, elementary and secondary schools, thousands of hospitals, museums, symphony orchestras, and libraries, thousands of mutual aid groups like Alcoholics Anonymous, to mention only a few of its more visible entities. Its institutions range from the giant Teachers' Insurance and Annuity Association, now the world's largest non-governmental pension provider with assets of more than $80 billion, to a clearing house through which amputees can trade their useless left or right shoes or gloves. Any list of its activities of reasonable length is bound to be a distortion.

How we could mislay a sector of society of this size and scope is something of a mystery. Perhaps the decline of this dimension of American pluralism began when Woodrow Wilson, the schoolmaster President, set out to use his extraordinary wartime powers to jail all our most gallant, original and entertaining misfits and "rationalize" American society. In any case, by 1946 the American tradition of independent action on the public business had been buried alive—an accidental casualty of Wilson, two wars which greatly improved the health of the state, a thoroughly demoralizing depression, and, finally, the politically captivating Keynesian contention that, in a presumably mature economy, government spending was often its own justification. This gave government a decisive advantage in the continuing contention for social responsibility, and the independent sector stopped growing. Many of its forms have survived and since the 1960s a tentative renaissance has begun, but for half a century the third sector was in limbo, the victim of an unexamined supposition that in an industrial society, independent social action was technologically obsolete.

So while there can be no doubt about the existence of a third sector, there are everywhere understandable doubts about its fitness as a competitor for the vast responsibilities of the welfare state. Given the present state of social thought, it is as hard to believe in the utility and virility of independent social action as it was to believe in the rationality and moral legitimacy of free markets before *The Fable of the Bees* and *The Wealth of Nations*. We need now to understand voluntary social process as completely as we understand market process, and libertarians could again show the way.

As the dust settles on the ruins of the socialist epoch, a second crippling deficiency of libertarian thought is becoming more visible and embarrassing. The economic methodology that the Russians have lately found unworkable still governs the internal affairs of firms in capitalist and socialist countries alike. An economy presumably works best if it is not administered from the top; a factory presumably works best if it is.

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In Adam Smith's hypothetical pin factory, the work was divided and specialized—and hence much more productive. That perception (and a dozen other converging circumstances) became the basis for the industrial era. Another element drew less attention: the method used to coordinate the efforts of these specialized workers was borrowed from the army, the principal previous undertaking that had involved substantial numbers of specialized participants. The necessary coordination was accomplished by regimentation, some people giving orders and others taking them. This primitive method survives in the modern corporation along with its military vocabulary: officers, rank and file, line, staff, chain of command, and the like.

When freemen went to work in factories, their status was not unlike that of the iron-collared serfs who had preceded them. Their employment was a kind of voluntary indenture, tacitly renewed each day, in which the worker agreed to submit to supervision for a certain number of hours for an agreed-upon amount of pay. Workers were free in one sense, but painfully unfree in another. Feudalism had only moved indoors. The movement to civilize this relationship began immediately and has been more or less continuous. Workplaces have been made safer, lighter, warmer and more agreeable. Wages are higher, hours shorter, and an accumulation of law and custom has elaborated the rights of employees and put limits on the prerogatives of employers. But the system has never been altered elementally. Working people are far, far freer than slaves or indentured servants, but they are not as free as their bosses and not nearly as free as they might be.

The economic consequences of regimentation are enormous: productivity is undoubtedly much lower than it could be, and the need to translate work, which is boundless, into jobs, which are finite, is the primal cause of unemployment. But the most serious consequences are more urgently human ones. A nation of employees, subordinated to a hierarchy, however restrained and benign, are politicized in the sense that much of their effort must be spent pleasing the powers that be in ways that are entirely unrelated to the work itself. In a society that is forever boasting of its dedication to democratic ideals, employees are, however affluent they may have become, members of a subordinate, unmistakably lower, class.

The regimentation of work has created a political majority whose attitudes about themselves and their world are heavily conditioned by a lifelong habit of subordination—what Hayek has called an "employee mentality." How can people see the value of independence and self-propulsion when they work in a system in which they are dependent and subordinate? There is little in their daily experience which would cause them to conclude that a society is kept alive by a continuous process of adaptation, led

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by independent, enterprising people. They see society as something static—something to be administered. Employed people can scarcely be expected to revere qualities they have been carefully instructed to repress. Instead, they tend to become what the way they work requires: politicized, unimaginative, unenterprising, petty, security-obsessed, and passive. Thomas Jefferson, enchanted as he was by labor-saving machinery, still feared that industrialization would produce a breed of working people so altered by daily subordination that they would be unfit for self-government.

Here the problem of the unworkable, unaffordable and untouchable welfare state and the problem of workplace regimentation converge. In America's long march to its distinctive brand of social democracy, there came into being something Marx could not have anticipated: a working class with proletarian status, but with middle-class means. Now, the overwhelming majority of Americans, in their working-class capacity, consider themselves entitled to an ever-expanding range of social services, which in their middle-class capacity they pay for in taxes they find increasingly unreasonable.

The search for ways to liberate working people from their proletarian status has a long history. Most of the many experiments in workplace reform, accepting the apparent necessity for politicized workplaces, have sought to distribute political power to the workers, and the flaw in this approach sometimes reveals itself palpably when workers in worker-managed plants strike against themselves. But now there is movement toward more elemental reform which would de-politicize workplaces entirely, make each worker self-supervising, and base compensation on some credible estimate of the value each person adds to whatever product or service the firm produces—in effect bringing the principles of the free market into the plant. But without a legitimating rationale, something the libertarians are best equipped to provide, this is bound to be a confused and halting process.

Libertarians, to their enduring credit, believe passionately in the power of ideas. They learned from Hayek that socialism was always and everywhere an intellectual movement before it could become a mass movement—and that any successful anti-socialist effort would have to be built on an unshakable intellectual foundation. This has been the central article of faith that sustained the movement since it began to rebuild itself in the 1940s and 50s. Libertarians are, perhaps inevitably, something of a joke as political activists, but the communist collapse is evidence of the immense power of an intellectual movement which, just forty years ago, would have fitted into a phone booth. Now history is beckoning from a somewhat different direction, one which many libertarians will find for-

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bidding. The lack of a coherent, comprehensive vision of voluntary community has forced libertarians, unnecessarily, I think, into an individualist emphasis, a suspicious aversion to any kind of collective activity beyond the commercial, in spite of the fact that the libertarian movement is, itself, a voluntary collective with a strong sense of solidarity and remarkable power.

The chronic crisis of the world's social democracies is putting democratic political institutions under increasing stress. We may be in process of fulfilling the familiar prophecy, often made by some of political democracy's most passionate enthusiasts, that democratic societies are inherently unstable and self-destructive. It seems more than ever clear that the several forms of pluralism are interdependent—that the lack of economic pluralism imperils political pluralism and vice versa—and now our two-dimensional societies are showing unnerving signs of instability. It may be that a renaissance of the third, less familiar pluralism—the social pluralism manifested in the institutions of the independent sector—is essential to the survival of the other two; moreover that regimented working people will have great difficulty building and maintaining free societies; and that history has suddenly redefined the task of libertarian scholarship.

I believe Mises himself would have welcomed enthusiastically the continuing enlargement of libertarian thought. Unique among economists, his knowledge of economics was so complete that he understood its limitations. In *Human Action* he said, with his customary clarity, that in the vast spectrum of human activities, economics treated only a slice, those which result in an exchange. Mises knew that economics is the beginning of the inquiry into the nature and metabolism of human action and certainly not the end of it.

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Roy B. Helfgott

LABOR PROCESS THEORY VS. REFORM IN THE WORKPLACE

Critics of the organization of industrial work under capitalism have ranged from the "human relations" school to socio-technical systems theorists and, most vociferously, to advocates of labor process theory (LPT). Their practical influence on management was small as long as production was rolling on and profits rolling in. When competition intensified, however, employers started to question old ideas and, abetted by the needs of new computerized technology, began to broaden jobs, allow workers greater discretion in their performance and involve them in shop floor decision making. LPT, however, has not contributed to this evolution toward more satisfying work. This paper explains why this is so by exploring two major shortcomings of LPT. First and foremost is that LPT has ignored the efficiency of the work process, refusing to acknowledge the legitimacy of a tradeoff between work "goodness" and productivity.

As a result, LPT has been unable to propose economically viable alternatives to existing job design and work organization. Second, LPT has identified management's goal in organizing work as gaining control of the process, when, in fact, it has been to make the process as economically efficient as possible. Thus, LPT could not see that, under changed circumstances, management might decentralize control toward the shop floor, if that might promote efficiency. LPT's founder, Harry

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Roy B. Helfgott, Distinguished Professor of Economics, School of Industrial Management, New Jersey Institute of Technology, Newark, NJ 07102, telephone (201) 596–3257, telefax (201) 596–3074, is the author of, *inter alia, Computerized Manufacturing and Human Resources* (Lexington, 1988). He thanks the anonymous referees for comments on an earlier draft and the editor, who has been most helpful.

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Braverman, and his disciples believed that it was impossible to reform work under capitalism, but experience shows otherwise.

Although labor process theory (LPT), which postulates a degradation of work under capitalism, has become a major school of thought on both sides of the Atlantic over the past two decades, it has been marred by two shortcomings that have rendered it incapable of allowing for the transformations of work organization witnessed in the 1980s.

The first and greatest shortcoming is a neglect of labor product, that is, a neglect of the efficiency of the production process. LPT tends to view work solely as an end in itself rather than also as a means to an end—the creation of goods or services for human use. As a result, labor process theory has been unable to propose viable alternatives to existing job design and work organization. Second, LPT has identified management's overwhelming goal in organizing work as gaining control of the process, when, in fact, it has been to make the process as efficient as possible. The LPT view precludes the possibility of any mutuality of interest between management and workers, and as a result, LPT has been unable to cope intellectually with management programs of affording employees greater involvement, autonomy, and control of their own jobs. By the same token, LPT could see no end to its *bête noir*, Taylorism, under capitalism. Indeed, according to the followers of LPT's founder, Harry Braverman, any work restructuring under capitalism would involve labor intensification and greater management control.[1]

Emergence of Labor Process Theory

The labor process school has been termed neo-Marxist, in that it derives from Marx's concept of alienation, according to which capitalism alienates the worker from his own activity, since the labor market forces him or her to accept a job that is dissatisfying, unfulfilling and subject to control by someone else.[2] The school was born with the publication of Braverman's seminal work, *Labor and Monopoly Capital*, in 1974.[3] Braverman saw job design and work organization, particularly in their scientific management modes, as parts of the capitalist project of appropriating labor by rationalization and mechanization. In his view, management sought uncontested, unilateral control over the labor process. Management deskilled the worker, often by investing his skill in new technology, in order to lessen his control over the job, leading to progressive job fragmentation, degradation, deskilling, job impoverishment, and worker dissatisfaction.

The LPT school developed rapidly in both the United States and Britain and soon spread to other countries as well. In the United States, within

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five years of issuing Braverman's book, Monthly Review Press published a compendium, *Case Studies on the Labor Process*.[4] Journal articles and books proliferated; analysts such as Philip Kraft focused on data processing and deskilling of programmers,[5] Richard Edwards on labor-management conflict over work on the shop floor,[6] and David Noble on the use of technology to transfer skill away from the shop floor.[7] By 1983, a Labor Process Conference had been held in Manchester, England, and it has since developed into a regular international event with published proceedings.[8]

Braverman v. Drucker

Almost all LPT writings, however, continue to ignore the issue of the output of the work process. LPT's lack of concern with productive efficiency is not surprising. Operating within a Marxian framework, with its concepts of human effort as the source of all value and profit as "surplus value" withheld from the worker, its followers agree that the aim of "capitalist" work organization is to achieve maximum productivity so that the capitalist can "extract" more profit from the worker. They do not indicate, however, how a "socialist" work organization would differ; they are contemptuous of "capitalist" job design and work organization without bothering to explore what would be the effects of other approaches. Certainly the Soviet Union never came up with anything different and, indeed, Lenin hailed Taylorism, which did not make him much of a hero to the LPT school.[9] (As with other things borrowed from the West, the Soviets applied scientific management crudely, using time studies to arrive at "quotas" for production, but not for improving the way the job was to be performed.)[10] Michael Burawoy and Janos Lukacs's study of state enterprises in then-Communist Hungary concludes that "the realization of a firm's production possibilities requires centralization in advanced capitalism and shop-floor autonomy in state socialism."[11] Autonomy arises from the inefficiency of production under state socialism, which makes managers dependent upon workers on the shop floor to correct mistakes, work around parts shortages, and the like.

Moreover, while emphasizing all the negatives of work under industrial capitalism, LPT ignores the beneficial effects. Hayek argued that the rise of industrial capitalism brought forth labor-saving machinery that released workers from back-breaking drudgery, making them more productive and more highly remunerated for less effort.[12] As a broad historical statement, of course, this is true, but changing technology associated with mass production forces one to make qualifications to it. Industrial engineers initially paid little heed to how the jobs and work processes they designed affected workers, in terms of such aspects of their jobs as task

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diversity or autonomy. Braverman's analysis of work organization is not necessarily wrong; about a century ago, with the advent of mass production techniques and an unskilled immigrant workforce, management did take control of the workplace and simplify jobs, with Frederick W. Taylor's "scientific management" providing management new control techniques and a new way of organizing work.[13]

Peter Drucker points out, however, that the greatest achievement of Taylorism was to have made the manual operator more productive. According to Drucker, Taylor applied to the production worker the principles that machine designers had learned to apply to the work of a tool: identify the work to be done, break it down into its individual operations, design the right way to do each operation, and finally, put the operations together in a sequence in which they could be performed fastest and most economically.[14] By raising the productivity of manual work, it converted yesterday's "laborer," condemned to an income at the margin of subsistence, to today's semiskilled worker with a middle-class standard of living.[15] Drucker exaggerates, of course, for many other factors contributed to higher living standards, but improved work systems and mass production, with the resulting economies of scale, were very important.

Work as a Tradeoff

Thus, both Braverman and Drucker are partially correct. Scientific management, coming during a period of very rapid U. S. industrialization, helped to eliminate chaos on the plant floor and rationalize the management process so that production could take place. Mass production, management control, and work simplification increased productivity significantly and thereby contributed to higher living standards in industrialized countries. (Indeed, the continual rise in living standards, due to improved productivity, demolished Marx's prediction of worker impoverishment and a resulting polarization of the classes under capitalism.) But they also spawned a host of repetitive and boring jobs, as Braverman contends. Clearly, there was a tradeoff between higher living standards and simplified jobs, and for many, work became purely instrumental, affording no satisfaction except as a means to earn money to enjoy life outside the work place.

Economics provides the theoretical basis for such tradeoffs through its concept of "opportunity cost." The cost of doing one thing is defined as the foregone chance to do another. A society must make choices, since at any given moment it has just so many resources with which to produce goods and services, and if it chooses to have more of product A, it must of necessity end up with less of B.

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Similarly, as Arthur M. Okun has observed, society must make choices between equality and efficiency, and conflict may arise between a desire to reduce inequality and the economic inefficiency that might result from such changes.[16] The tradeoff between job "goodness" and productivity can be subsumed under the choice between equality and efficiency. A middle ground might hold that society should establish a work system that neither sacrifices everything for productive efficiency nor is so concerned with job "goodness" that it disregards how much is produced per worker. Taylorism and Fordism may have gone too far on the efficiency side of the equation, with the tradeoff being unfair to workers who had to bear the externalities, but labor process theorists err in the other direction.

Experience in the Automobile Industry

The tradeoff between job quality and production efficiency is illustrated in the history of the automobile industry. At first, automobiles were built by craftsmen, and the resulting cost of production was so high that none but the very rich could afford to own cars. (A worker could hope to drive a car only if hired as a chauffeur.) Indeed, there was concern at the time that the advent of the automobile would exacerbate class distinctions and antagonism.

Henry Ford, of course, changed all that with his mass production methods, which utilized economies of scale and new production methods. Yet the assembly line, a conveyer belt passing fixed stations at which workers performed simple tasks, came to epitomize all that was wrong with industrial jobs. The image of factory work, as invoked by Charlie Chaplin in *Modern Times*, was that of an assembly line worker doing nothing but tightening bolts continuously eight hours a day, five days a week, fifty weeks a year.

The assembly line seemed to symbolize the ultimate subordination of man to the machine,[17] and, at first, workers refused to work on it. To counter the astronomical turnover rates, Ford introduced his famous five-dollar-a-day wage, which was sufficient to overcome resistance to the assembly line. (The automobile industry always has had to pay relatively high wages to attract workers, but this shows not only the intense undesirability of its tasks, but also that workers have been sufficiently interested in being able to enjoy higher living standards to accept "bad" jobs.) Mass production cut production costs so much that Ford could sell enough cars to pay such a high wage, while the automobile became so inexpensive that it was soon a product of mass consumption and no longer merely a plaything of the rich.

Paralleling these developments was even further assembly-line speciali-

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zation. David A. Hounshell, however, has questioned whether this was due to Taylor's influence.[18] Ford sought to replace labor with machinery, while Taylor's aim was to improve the efficiency of workers on a given production process. But, although Fordism and Taylorism differed, as the new production methods spread, the two concerns meshed and Taylor, in effect, provided a rationale for Fordism.

Although much criticism of mass production has centered on the assembly line, it was not typical of industrial work; nor was mass production as dominant as normally portrayed. The continuous process industries were organized differently, and even in the metal industries, most people continued to work in groups, albeit at truncated tasks devoid of intellectual content. In addition to specialization and further division of labor, scientific management contributed to the problem through its time and motion studies, which prescribed how the simplified jobs were to be done and how long they should take. Under the circumstances, the most attractive feature of many jobs was the pay packet at the end of the week. But there remained places for skilled craftsmen who took pride in their work. Indeed, such new crafts as that of the electrician came into being.

Industry had always employed unskilled labor as well as skilled; what was new was the higher proportion of unskilled labor. The natural increase in population, even supplemented by the "old" immigration from northwest Europe, was insufficient to meet this new need, so manufacturers sought a new labor supply in immigrants from southern and eastern Europe to fill the less skilled positions in the mines, mills, and factories they were opening. As bad as many of these jobs were, they provided higher wages than the immigrants could have earned as peasants in their home countries. The new workers' lack of education, skill, and experience, however, encouraged further job simplification and intensified supervision.[19]

A tradeoff between work process and product still exists in the automobile industry, as recent experience demonstrates. In the mid-1980s, Volvo eliminated the assembly line at its Uddevalla plant, replacing it with seven-to-ten-person teams that used craft methods to build a car. Jobs were much more interesting, with team members trained to handle all assembly jobs and working an average of three hours before repeating the same task.[20] Saab's Malmo plant was similarly "worker-friendly," but both companies found that, while workers were happier, they also were less productive and the plants noncompetitive. At Saab it took 80 hours to build a car, compared with a European average of 57 and a Japanese average of 17.[21] When General Motors bought half ownership of Saab, it abandoned the work experiment (and soon closed the plant), and Volvo has

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closed Uddevalla. A more satisfying work process may become economically efficient some time in the future; indeed, a sympathetic analysis of Uddevalla by Robert H. Rehder sees it as being in an early stage of development, with its potential lying "in the synergy developed by the internal integrity of its sociotechnical components."[22] But as yet, its day has not arrived.

Management Control of the Workplace

Braverman's second mistake is his contention that management desired control of the work process per se. In reality, management sought control as a means toward greater efficiency. The firm under capitalism seeks to maximize profit, and efficiency helps toward that end; control of the work process, however, may have no relationship to profit. Indeed, prior to the emergence of the new control techniques in the late nineteenth century, many industries had left the provision of a labor supply, craft standards, and unsupervised worker discipline to the trade unions.[23] Industry abandoned that custom only when new control techniques resulted in greater efficiency. Noble claims, as a counterexample, that numerical control (NC) won out as the approach to programmable machine tool automation over General Electric's competing record-playback technology, not for economic reasons, but largely because the latter relied too heavily on the skills of the machinist.[24] Since GE's approach was never fully implemented, one cannot know if it would have been as efficient as NC; the crucial point, however, is that it was not private management or market forces that determined the outcome. Noble himself emphasizes the important role played by government, that is, the Air Force, in the victory of the numerical control approach.[25]

If efficiency and not control for its own sake is private management's goal, new technology and a changed work force could, under the right economic conditions, induce companies to return control to the workers on the plant floor. Since labor process theory asserts that control is an end in itself, strictly speaking, it cannot admit the possibility of work reform under capitalism. Hence, LPT advocates tend to treat greater autonomy and participation as mere attempts to prevent worker militancy and resistance. Paul Thompson, a British member of the school, attempts to accomodate actual changes in work with labor process theory in a way that might well be seen as contradicting the theory's founding thesis: "Precisely because capital has continually to revolutionise production and labour's role within it, it cannot rely wholly on control and coercion. At some level, workers' cooperation, productive powers, and consent must be engaged and mobilised."[26] In the United States, Harley Shaiken and his

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associates claim that worker participation programs are part of an "ideology of competition" promoted by mangement to make workers believe that greater efficiency and job security are related, so as to "encourage workers to adopt a managerial perspective when production problems arise on the shop floor and to gain personal satisfaction from contributing ideas that promote efficiency."[27]

Apart from the LPT jargon, both statements are fairly accurate. Since mangement in a market economy is concerned with production efficiency, it seeks the best means of achieving it. While at one time the centralization of control seemed the best means to this end, today greater worker autonomy, control, and participation may be preferable. Levi Strauss, for example, is converting its conventional sewing lines to self-managing work teams. "No longer living extensions of their machines, team members perform multiple tasks and make scheduling decisions."[28] The system is too new to determine if it boosts productivity, but it does improve quality and cut production time, permitting a plant to switch styles more rapidly in response to changes in consumer demand.[29]

This example also demonstrates that, contrary to LPT, there can be some degree of mutuality of interest between workers and employers, as both benefit from work restructuring. Management can gain increased efficiency by allowing workers more satisfying jobs and greater autonomy.

Other Criticisms of Work Organization

Long before Braverman, it was evident that workers' talents were not being fully utilized, since jobs had been broken down into their constituent elements and all intellectual content removed from them. The famous Hawthorne studies at Western Electric in the late 1920s stressed the social aspects of work and showed that employees did not act as isolated individuals seeking to maximize economic gains; informal work groups established production standards that did not necessarily conform to those of management.[30] Some progressive companies altered their human resource management policies in line with the new "human relations" doctrines. The human relations approach, however, did not challenge traditional organization of work, but accepted existing technology, organization structure, and job design as given, seeking to "humanize" the situation through concerned, supportive supervision and some degree of employee participation in routine, non-workflow related decision making, such as what color to paint the plant cafeteria. The assumption was that by paying attention to the social needs of work groups, management would secure employee compliance with its edicts. But such compliance was not always

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forthcoming and when it was, it was grudging at best. Tayloristic principles, even when modified by a concern for "human relations," often resulted in work group alienation from company goals, as demonstrated by absenteeism, lateness, sloppy workmanship, and disciplinary problems. As Harold J. Leavitt has put it, the informal organization of the work group became "an informal coalition designed to fight the system."[31]

The problem was accentuated as the composition of the labor force shifted from consisting primarily of unskilled immigrants who were often illiterate, at least in English, to educated American-born workers. A better-educated work force, schooled to believe in democratic principles, became increasingly reluctant to work under authoritarian control at routine jobs.[32] The persistence of Taylorism, consequently, backfired in terms of its major goal—the increased productivity of the manual worker.

The growing awareness of some managers that all was not well with the way work was structured was supplemented by the development of the behavioral sciences after World War II. Abraham Maslow contended that there is a hierarchy of human needs, according to which workers could be spurred to better performance only through more challenging jobs which would fulfill their need for self-actualization.[33] Chris Argyris claimed that Taylorism limits initiative and that organizations must be designed to allow harmony between personality and organization.[34] Douglas McGregor proposed Theory Y, which sees work as a natural part of people's lives, workers as motivated to pursue goals to which they are intrinsically committed, and most workers as eager to accept responsibility.[35] Frederick Herzberg argued that only work itself—job content, not job context—can motivate people.[36] A major reason that practicing managers listened to this "neo-human relations" school was that it did not merely criticize the existing situation, but offered ideas on how things could be improved for the benefit of both employees and companies. A growing minority of managers recognized that, while narrow jobs governed by the stopwatch had resulted in improved efficiency in the past, that was increasingly not the case. American research concerning worker motivation through job enrichment stressed the need for jobs with skill variety, task identity and significance, autonomy and feedback.[37] Research in Britain, particularly that of Joan Woodward, disclosed the relationship between organization structure/work design and the type of technology utilized.[38] And socio-technical systems theory, based on studies of job design and productivity in British coal mining, held that an industrial organization is a structured socio-technical system, in which people and technology interact and are interdependent.[39] This led to the concept of autonomous work teams, in which members share among themselves much of the decision making about the planning and execution

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of work. The task, in turn, is designed so that it is a whole process of work on which members can perform a variety of functions. Such an organization of work requires that there must be feedback from the group.

Increasing Pressures for Change in Work

Further pressure for change emanated from the 1960s social climate and the rebelliousness of the young, who displayed a growing resistance to routinized work. This became known as the "Lordstown syndrome," since it manifested itself on a major scale at General Motors' new Lordstown, Ohio plant, which was filled with young workers. Rising absenteeism, turnover, and disciplnary problems, the "blue-collar blues," led many observers to question the survival of the work ethic. The clamor even prompted a White House response. President Nixon, in his 1971 Labor Day message, stated that, "in our quest for a better environment, we must always remember that the most important part of the quality of life is the quality of work, and the new need for job satisfaction is the key to the quality of work." A special task force under his Secretary of Health, Education, and Welfare produced a study, *Work in America*, that reinforced the attack on dull and demeaning work.[40]

Some companies had become aware that authoritarian management and simplified jobs no longer met their needs. Swedish employers were particularly active in the search for new forms of work. With high living standards, full employment, and a tax system that took away most overtime pay, Swedish workers disliked factory work, particularly the assembly line, and reacted against it through absenteeism and turnover rates (reported to average 20 percent) that were much higher than those in the U. S. Volvo and Saab, as we have seen, were leaders in restructuring. In the interest of improving the quality of work life, Volvo began experimenting with job rotation in the mid 1960s. When it opened its Kalmar plant in 1974, it replaced the old-fashioned assembly line with an individual carrier that brought a car to a self-managing team that worked on it for up to 25 minutes. Any lower productivity at Kalmar was compensated for by significant reductions in rates of absenteeism and turnover. Christian Berggren points out that the Kalmar plant eventually returned to more traditional methods, but that both Volvo and Saab have been more successful in work transformation in their truck assembly operations.[41] At Volvo's facility at Arendal, also opened in 1974, work teams have a high degree of autonomy, yet productivity is equal to that of its main plant, and quality is higher.

In the 1960s, a few U. S. companies also began to experiment in new plants with human resource management techniques, including work

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organization innovations, stemming from the new field of organizational development (OD). The use of autonomous teams, pay-for-knowledge compensation schemes, and productivity bonuses gave management greater flexibility in workforce utilization and, in addition, seemed to be a factor in keeping those plants nonunion,[42] as workers reacted positively to the new work climate. This, of course, heightened management interest in the new approaches.

Although there were further innovations during the 1970s, bureaucratic structure, Tayloristic work organization, and directive management persisted. As we have argued elsewhere,[43] despite its original contributions to efficiency, Taylorism had lost its advantages over time, but management was slow to realize it. As the 1980s unfolded, however, things began to change. Two back-to-back recessions, with that of 1981–82 the deepest since the Great Depression of the 1930s, hit American manufacturing very heavily and economic globalization saw the loss of markets abroad and at home, as foreign firms, particularly Japanese ones, offered better quality products at lower prices. The severe competitive problems faced by American industry challenged all the principles by which companies operated, including bureaucratic structure, mass production, traditional work organization and authoritarian methods of management.

The Influence of Computerized Technology

New technology also became an instigator of change.[44] Microelectronic technologies, which include computer-aided design (CAD), robots, computerized numerically controlled (CNC) machine tools, automated materials handling systems (AMHS), and vision systems, have been altering production processes in ways that further undermine the traditional approach to work organization.

The nature of demand also has been changing, with consumers seeking new and differentiated products, as evidenced by the shorter product life cycle. The rationale for heavy investment in special-purpose technologies was that they provided economies of scale with which to cater to mass markets, but now those markets have contracted.[45] Rapidly changing demand does not provide sufficient time in which to recoup such investments.

While computerized manufacturing provides such benefits as higher productivity, reduced costs, and lower inventory on hand, its greatest advantage is production versatility, that is, the ability to perform different operations without costly retooling. Since machine tools can be reprogrammed, they can be applied to a diverse mix of products, enhancing a firm's competitiveness by providing the flexibility with which to respond

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quickly to market shifts. If consumers start to favor small over large widgets, a manufacturer of large widgets using computerized technology could rapidly switch production rather than suffer a decline in sales.[46] Such flexibility is crucial, for rapid changes in world markets will continue to require frequent shifts in product lines.[47]

Stephen Wood, in reviewing the question of the transformation of work, discerns two types of flexibility. The first, called numerical or external, seeks to adjust labor inputs to fluctuations in output, while the second, termed functional, seeks to deploy the skills of the workforce to match changing compositions of output, workloads, and the like.[48] Our concern, in this paper, is functional flexibility. Michael Piore and Charles Sabel argue that, under mass production, machinery was devoted to performing a single function, and that, in turn, spawned special-purpose jobs; a drill press begets a drill press operator.[49] Given the ability to reprogram machine tools in order to perform different tasks, e. g. bore instead of drill, computerized technology represents a return to more general-purpose machinery. They contend that this permits flexible specialization in production and provides the opportunity to return to craft types of work, since jobs must become more general and shop floor workers more broadly skilled. LPTers adhering to the Braverman thesis of management control and intensified labor supervision must deny this possibility.

The new technology also favors decentralization of control. Highly automated plants require more integration and coordination at lower levels, pushing decision making downward and raising the need for employee involvement and expansion of the scope of jobs.[50] Information, traditionally monopolized by managers, must become available to workers on the shop floor if they are to act on their own. Complex new technology also is subject to breakdown, which is extremely costly under automation. When workers have been provided with understanding of the technology, they can do preventive maintenance to avoid breakdowns and can make corrections when they do occur, shortening downtime greatly. According to Larry Hirschhorn, "the new cybernetic machines create new sources of error and failure with which only skilled workers, ready to learn and adapt to new production conditions, can contend."[51]

Computerized processes change the very nature of work, with employees having to do less, but think more. Although modern technology demands "intellective" skills, social systems can impose limitations on their development and expression. If workers' creativity is stifled, they will, accordingly, act dumb, fulfilling management's expectations. On the other hand, when workers are given the opportunity to be self-directed, they do rise to the occasion.[52]

Since new technology demands more worker involvement and broader

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jobs, it does not conform to the Braverman hypothesis. Even LPTers, such as R. Kaplinsky, who recognize the potential of new technology to upgrade jobs, believe that it will be blocked by the power relationships under capitalism.[53] We are not proposing technological determinism; there is an area of choice for management as to how new technology is utilized. Organizational structure and job design may not be changed to better fit the technology. But competitive pressures make this unlikely. A British study group from the electrical machinery industry that visited North America reported that the introduction of programmable automation can lead to significant productivity gains, but that without new organizational approaches, at least 40 per cent of the realizable benefits would be lost.[54] Contrary to the LPT view, accordingly, many companies are undertaking new ways of organizing work and using technology to widen discretion and involve employees in decision making with respect to their jobs. Quality circles—work groups that meet regularly with their supervisors to discuss production problems related to both efficiency and quality, and to fashion solutions to them—are spreading. Such joint endeavors are a fact of life in thousands of companies today and are critical to businesses' efforts to improve quality and compete in world markets.[55]

Change, particularly work flexibility, is effected more easily in unorganized plants. In unionized ones, however, it impinges on labor-management relations, requiring changes in work rules that inhibit job mobility. Since unions built their protection of worker security around management's old system of narrow job classifications, they tend to resist expanding the scope of jobs. It is a measure of how deep are the forces for change, then, that even many unionized plants now have new forms of work organization, with broader jobs, teams, worker autonomy, and quality circles, usually called "Quality of Worklife" (QWL) circles. In many formerly hostile relationships, today unions and managements are cooperating to improve efficiency and, thus, save jobs.

Improved Competitiveness and Better Jobs

Companies that have tried employee autonomy and involvement have expressed satisfaction with the results. All those in our study reported an upsurge in employee ideas for greater efficiency, fully justifying the time workers spend in meetings.[56] By giving the work group a say in operations, management makes it a functional part of the organization and, in the process, converts its traditional alienation from the organization into identification with it and its goals.

Employee involvement alters the nature and role of supervision. As Wickham Skinner has pointed out, managers, instead of acting as watch-

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dogs and disciplinarians, become planners, trainers, and communicators.[57] We found that the industrial relations problems encountered in operating a new system of autonomous work teams in a unionized steel mill were with supervisors who had trouble adjusting to a situation in which they were no longer the "bosses."

Not all companies, divisions and plants within companies, or even departments within plants, have adopted the new forms of job design and work organization, but they are spreading at a rapid enough rate to constitute a sea change. Major companies are now operating technologically advanced plants in which workers have a lot of authority. They can correct mistakes on their own, order parts when necessary, and decide among themselves when to work overtime. The General Motors Saturn project includes autonomous work teams and joint union-management decision making on just about all plant operations. To date, the Saturn experiment has been a great success; production cannot keep up with demand and the Saturn has become the highest-quality American-made automobile, with as few defects as Hondas and Nissans.[58]

Management thus has found its way toward making work intrinsically more satisfying and less centrally directed, because in this direction lies greater efficiency and product quality. Training employees to be capable of handling advanced technology upgrades their skills, and motivating them to perform through the provision of more meaningful jobs, giving them autonomy in carrying out those jobs, and involving them in decision making, have led to higher profits.

Obviously, adherents of labor process theory have not been able to ignore all that has been taking place, but many if not most of them remain orthodox followers of Braverman and attempt to explain away the changes. A number of them, however, have cast doubt on the thesis that control of labor is mangement's major concern. At least one scholar has even raised the question of whether there is any future for labor process theory.[59]

Labor process theorists' focus on such issues as control and deskilling, which mainstream theorists neglected, may have helped the latter in the search for new approaches to work, but labor process theorists have ignored the need for production efficiency, refusing to concede that there might be a link between profitability and the ability of a firm to provide jobs. They have not seen that management is more interested in efficiency than control of work, nor have they recognized that work could be changed in a private enterprise system. Thus, the labor process school has contributed very little to the ongoing reformation of work and cannot account for that change in capitalist practices.

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Dominick T. Armentano

ANTI-ANTITRUST: IDEOLOGY OR ECONOMICS? REPLY TO SCHERER

F.M. Scherer has not effectively rebutted my subjectivist criticism of the standard microeconomic welfare model; Scherer's historical reference to what Congress (allegedly) believed is irrelevant to the theoretical concerns raised by subjectivism. Nor does my "principal" criticism of antitrust policy rests on "philosophical foundations"; my principal criticism rests on conventional economic analysis and a detailed economic history of the classic antitrust cases. My conclusion that the electrical equipment conspiracy of the late 1950s had no significant effect on market prices is supported by Ralph Sultan's findings; indeed, it is Scherer who brutally ignores the context and misrepresents the general thrust of Sultan's research. Scherer's comments on OPEC *confuse the distinction that I made between private and governmental cartels.*

Finally, the economic welfare model that Scherer embraces so enthusiastically at the start of his review cannot be so suddenly discarded when I show something inconvenient: namely, that the "dominant firms" in the classic antitrust cases did not reduce market output and did not raise market prices. Scherer has not come to grips with my central thesis that antitrust regulation has generally been employed to restrain the competitive market process.

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Dominick T. Armentano, Department of Economics, University of Hartford, West Hartford, CT 06117, is the author of *Antitrust & Monopoly: Anatomy of a Policy Failure*, 2nd ed. (New York: Holmes & Meier, 1990) and *Antitrust Policy: The Case for Repeal* (Washington: Cato Institute, 1991).

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Antitrust and Monopoly, 2nd ed. (New York: Holmes & Meier, 1990), in one form or another, has been in the intellectual arena for twenty years.[1] A review in *Public Choice* once described it as "the best book length treatment of this vital public policy issue in print."[2] Even F. M. Scherer once acknowledged that the author was well known as "one of the most articulate critics of antitrust."[3] Yet readers of this journal would not get that impression from reading his recent disparaging review essay on the second edition.[4]

Scherer is an important and often-cited authority in industrial organization. His textbook[5] has been a market leader for many years and has probably influenced a generation of students. His critical comments on *Antitrust and Monopoly* are likely to carry considerable weight with readers who have not read the book and might never read it based upon his review. That is a circumstance I cannot let stand without responding.

Natural Law

Scherer's review starts almost immediately with a fundamental mischaracterization of my work. He asserts unequivocally that my "principal criticisms of antitrust rest on philosophical foundations." Scherer would have readers believe that while he is the economic "plumber" employing conventional tools of economic analysis, my investigation of antitrust issues is more "Thomistic" and grounded primarily upon esoteric notions such as natural law.

There are 292 pages in the reissued *Antitrust and Monopoly*. A full 291 of these are concerned with economic theory, economic analysis, and the economic evidence from the classic anititrust cases. Less than one page (found at 8–9)—a scant 30 lines or so—concerns a topic titled the "legitimacy" of antitrust policy. Here I explain (not advocate) the natural rights position on public policies such as antitrust. But these thirty lines of text so befuddle the plumber-economist Scherer that he attempts to tar my entire critical analysis as primarily "philosophical" rather than as economic.

Scherer doesn't even get the tar on right. In his discussion of those thirty lines he asserts that "according to Armentano (8) individuals have inalienable rights to life, liberty, and property." But none of that was "according to Armentano" and a careful reader would know it. My first substantive sentence outlining the natural rights position was followed immediately by a footnote with two sources.[6] Thus, the position described was explicitly attributed to two non-economist authorities who have spoken intelligently and at some length on the subject of natural rights and public policy. Moreover, the policy conclusions of the argument were explicitly

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labeled "normative" (9) so that no reader would mistake this brief philosophical exploration for the economic argument in the rest of the book. And no one ever has—until Scherer.

Subjectivism

Scherer reviews the standard microeconomic "welfare loss" model (also explained in *Antitrust and Monopoly*) and concludes that monopolization or cartelization must reduce consumer surplus and social welfare. I have argued that this analysis and welfare conclusion are problematic for a number of reasons. The first reason, entirely consistent with standard neoclassical analysis, is that any alleged monopolization may well be associated with economies of scale and scope including lower transactions costs. If the process of monopolization can economize on the use of scarce resources, either in the short or the long run, then it is simply not accurate that "monopoly" unambiguously lowers "social welfare." The same reasoning can apply to cartelization or to any horizontal price and output agreement. I speculate that price agreements might reduce price adjustment costs, information costs, or risk and price uncertainty costs, and may be more flexible arrangements than, say, permanent merger with a competitor. Scherer asserts confidently that "price-fixing arrangements provide few if any redeeming merits"; but then he backtracks and suggests that we carefully study countries such as Japan that allow precisely the sort of contract flexibility that I recommend.

My more fundamental criticism of the conventional welfare analysis is that value itself is entirely subjective and therefore non-comparable among different individuals, making the welfare loss due to monopoly completely indeterminate. Inexplicably, Scherer first claims that my subjectivist criticism is "unstated" even though it is explicitly stated (28–9). He then undertakes his own review of the theory of subjective value and concludes, correctly, that "adding up all the transfers and dead-weight welfare losses, the antitrust theorists are adding apples, horse apples, and oranges to reach an unknowable, non-comparable sum." I couldn't have said it better myself.

Now one might think that Scherer's correct restatement of subjective value theory would lead him inexorably to conclude that the standard welfare model cannot "prove" what it alleges to prove, i.e., that "social welfare" is reduced by monopoly. Instead, Scherer leaps from the world of theory to an alleged historical fact: that when Congress enacted the Sherman Act, it believed that the value of a dollar to a consumer was worth more than that same dollar to a "wealthy stockholder."

What Congress believed concerning income transfers has nothing to do

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with the theoretical issue under consideration. The utility (value) that an individual experiences from consuming any unit of a good is an entirely personal and subjective state of affairs. Lacking any objective unit of measurement, these individually felt experiences are incapable, in principle, of being arithmetically manipulated. If a rich person loses a dollar he is worse off; if a poor person finds that dollar, he is better off. But whether "total" social welfare (utility) has been increased or decreased by that transfer is scientifically unkowable despite any alleged Congressional belief or Scherer's own personal "guffaw test."

The Perfectly Competitive Model

Things don't improve in Scherer's discussion of the perfectly competitive model. Although I described his industrial organization text as a "well respected mainstream position on antitrust," Scherer resents the fact that in a single footnote I grouped him together with Stan Boyle and Joe Bain, two infamous "structuralists." Scherer claims that he does not believe that "antitrust policy should be based primarily on structural factors" (which is the way I characterized the structuralist position) and that he is a behaviorist rather than a structuralist.

But what is the fundamental determinant of behavior for a behaviorist, if not "industrial market structure" (which is, after all, one half of the title of Scherer's textbook)?[7] And what is good or bad behavior for a behaviorist? What is the behavioral *standard* against which we judge the conduct of real-world firms? My argument in *Antitrust and Monopoly* was that the standard, for all practical purposes for most (not all) pre-1980 economists, was primarily the behavior that occurred under perfectly competitive conditions, and I was extremely critical of that standard for policy purposes.

Scherer admits that my criticism of perfect competition may apply to numerous "naive" publications but maintains that it does not apply to his text and his own behaviorist views. Yet every subsequent criticism of corporate behavior in his review (e.g., predatory pricing) is associated with a departure from the perfectly competitive model. Moreover, Scherer himself quotes his affirmation that "the competitive norm does seem to serve as a good first approximation" of the correct antitrust policy. Thus by his own admission, Scherer is a "first approximation" structuralist; if he does not like the label he should be explicit about what behavioral deviations from perfect competition he would permit.

In a discussion of my alleged "errors," Scherer asserts among other things that I confuse the market and individual demand curves on page 16; but my market demand curve discussion stops on page 15. The discussion on page 16 is given over completely to the firm under perfect competition

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and to the individual demand curve that the firm faces. Perhaps the diagram on page 16—which explicitly refers to the aggregate demand and supply discussion on the previous page—confused Scherer into asserting that my description was in error.

The History of Antitrust

Most of Scherer's comments review my analysis of the classic antitrust cases. He does admit that "a considerable fraction" of that criticism is "well-founded." Yet having said that, and without specifying the dimensions of that "considerable fraction," Scherer identifies nothing but alleged errors in the remainder of his paper.

Regarding my price-fixing chapter, Scherer argues (1) that I advocate a "world without penalities for price fixing"; and (2) that cartels, though often only "limpingly effective," may still work a substantial injury to buyers and society.

I don't advocate a world without penalities for price fixers—just a world without legal penalities. If the agreements do not bring about the results intended, then the firms will be penalized, much like they (and their owners) are penalized when mergers fail or when firms malinvest. I am all for having business organizations bear full liability for all of the economic costs of their actions. The question is whether any additional legal penalties are warranted.

Scherer is convinced that such penalties are warranted but his reasoning is somewhat obscure. First, he states clearly something with which I agree: "There is plenty of evidence that price-fixers are a chiseling lot, and that their agreements frequently do break down." But then he argues that this behavioral fact is not enough to justify antitrust repeal since "one must examine how cartels work in a prohibition-free environment." Unfortunately Scherer does not provide such an examination nor does he cite any relevant literature; he simply mentions OPEC and the allegedly successful fixing of the prices of turbine generators during the 1950s.

The most obvious "prohibition-free environment" is the U.S. economy *prior to* the Sherman Act. Before 1890, price-fixing agreements were not necessarily illegal; firms were generally free to attempt to coordinate their pricing decisions as they saw fit. And since the agreements were often only "mere promises," the courts (correctly) refused to enforce such arrangements.

The question, then, is: Was the economic world prior to 1890 laced with effective private cartels that restricted market supply and raised market price? An important study that examines the decade immediately preceeding the Sherman Act finds *no* evidence of any effective monopolization.[8]

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Indeed, in the allegedly monopolized "trust" industries, market outputs tended to expand far more rapidly than in the rest of the economy.

Scherer speculates that the effectiveness of the OPEC cartel (which my book does not examine) demonstrates that cartels can work an injury to consumers. I never maintained that a governmentally organized (oil) cartel—which would be immune from antitrust legislation anyway—cannot raise prices. Indeed, in *Antitrust and Monopoly*, I distinguished carefully between private and governmental oil cartels. For example, I examined the origin and operation of the state government pro-rationing "cartel" which restricted domestic crude oil outputs and stabilized prices in the U.S. for decades prior to OPEC. And I showed that the federal government supported the state-controlled cartel by restricting interstate commerce in "hot" oil and by regulating crude oil imports. Scherer notes that OPEC can even take things a step further and go to war in an effort to enforce its quotas. But all of this makes *my* point, that government cartels based on coercion can be effective while private cartels inherently fail.

Scherer's example of the (private) electrical equipment conspiracy of the late 1950s deals with an environment in which cartels were prohibited. He claims that my general conclusion that the "effect of the meetings and agreements on prices was insignificant" is contradicted by my primary source, Ralph Sultan.[9] If I had only "burrowed into" Sultan's Appendix 18, I would have discovered that the conspiracy in turbine generators actually did result in higher prices.

Sultan summarizes his conclusions in these words:

> In sum, the behavior of prices in switchgear, transformers, and turbine generators lends poor support to the argument that the meetings stabilized, elevated, or standardized prices in the marketplace. Over the years reviewed, prices seem to have been unusually unstable, cyclical, and nonstandardized. The meetings failed to influence prices because only some of the transactions were covered by agreements, because there was widespread violation of the spirit of the agreements, and because many other factors than the initial bid price influenced the utilities. Because these factors undermined the effectiveness of conspiracy, forces of supply and demand ultimately established the market price level—even at the height of the conspiracy.[10]

Scherer, in an attempt to rebut Sultan's (and my) general conclusion, extracts one sentence from an appendix that is concerned only with the alleged effect of conspiracy on order prices for turbine generators. The sentence is extracted out of context: Sultan's discussion regards the specification and the difficulties in employing a 94-equation econometric *simulation* model. When Sultan runs the simulation there is no convincing evidence that conspiracy has *any* effect on market prices at all. When version two of the model is tested for the impact of conspiracy on prices, there is

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"no discernible impact."[11] It is only with a final adjustment that the simulation model is made to "confess" the conclusion that conspiracy prices may have been 8 to 9 percent higher. But Sultan admits that this final adjustment also generates "exaggerated" predictions of price movements (as distingushed from the level of prices) in the 1950s and 1960s.[12] One is left with the distinct impression that the model may well have made the same "exaggeration" with respect to the predicted impact of conspiracy on the level of prices. Simulation models, as Scherer is aware, can be massaged to yield a wide variety of results. Given the entire body of Sultan's work, I stand by my conclusion (based on information at the time) that the overall effect of conspiracy on the prices of electrical equipment (and not just turbine generators) was "insignificant."

I have never maintained that business collusion could *never* raise prices. Indeed, the concluding paragraph of my own discussion of the issue (162) specifically allows that this is possible. All that I alleged in *Antitrust and Monopoly* was that my examination of several of the classic price conspiracies had concluded that these were, in fact, generally unsuccessful conspiracies. Scherer has not convinced me that my judgment was incorrect.

Monopolization

The "success" of conspiracy or monopolization occupies the bulk of the rest of Scherer's review. He admits that I show that most of the alleged "monopolies" in the classic antitrust cases "expanded outputs, reduced prices, and engaged in important technological innovation, entirely consistent with competitive behavior and efficient performance." But to Scherer that doesn't really prove anything:

> From the standard textbook demonstration that, relative to competitively organized markets, monopolies restrict output and raise prices, [Armentano] infers that proof of output expansion and price reduction rebuts the allegation of monopoly. But the simple textbook demonstration is far too simple to support this leap.

Here, at last, we have a fundamental difficulty that must be resolved one way or the other. The textbook leap that Scherer now derides as "simple" is precisely the same leap that Scherer himself employed earlier in his review to conclude that when monopoly power restricts market output, it raises market prices and lowers consumer and social welfare. If monopolies can't restrict market output and raise market prices, why prohibit them?

Scherer is anxious to employ the simple welfare model (his "box of

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analytical tools") when it concludes that "welfare" is reduced by a restraint of trade. But then he wants to jettison the tool-box model as too "simple" when someone demonstrates that in the real world, dominant firms in classic antitrust cases have *not* been able to accomplish such a restraint.

Take Scherer's criticism of my analysis of the *U.S. Steel* case. On a review of the court evidence, I concluded that there was no demonstration of "any general monopoly power." Overall steel output increased and steel prices fell during the period of alleged monopolization by U.S. Steel. Scherer does not challenge that finding, but holds that U.S. Steel did not increase its own output as quickly as the market and pursued a high-price, "declining dominant firm" strategy.

There is substantial evidence that U.S. Steel's declining dominant firm strategy was pursued by top management (with much internal opposition) because they feared antitrust litigation and dissolution should the organization compete too effectively.[13] Antitrust policy likely lessened the very price rivalry that Scherer supports. But aside from this, the analytical focus in any determination of "monopoly power" is *market* output, not firm output. Can a dominant firm (U.S. Steel was not a monopoly) pursue policies that restrict market output and increase market prices such that consumers and society are injured? (That was precisely the way the court analyzed the issue.) If Scherer now asserts that evidence of overall output expansion and lower prices is not relevant in a determination of "monopoly power," then what *is* relevant? And what becomes of the welfare model that economic plumbers (such as Scherer) employ to "address a wide array of problems"?

Scherer faults U.S. Steel for pursuing a "declining dominant firm" strategy of high prices; yet Standard Oil is faulted for being aggressively price competitive and for trying to "maintain its dominance in a burgeoing market." Thus, a firm is considered anti-competitive both if it keeps its prices high while market prices are generally falling, *and* if it lowers its prices while prices are generally falling. (If a firm lowers its prices faster than prices are falling it will probably earn a "monopoly" market share; if it fixes prices with a competitor it will be accused of price collusion. I believe that nearly exhausts the price-behavior possibilities.) Aside from the conduct predicted under perfectly competitive conditions (a "straw man" position that Scherer claims he does not hold) what business conduct and performance would be both efficient and legal?

Scherer claims that my analysis is static in that it fails to recognize that market outputs can be expanded (over time) because of technological change and lower cost curves. But it is Scherer who must explain why a "monopolistic market structure" in steel and oil (his characterization) generated such dynamic, pro-consumer performance in these industries. And

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it is Scherer who must explain what behavioral standard he employed when he concluded that Standard Oil and American Tobacco "went too far by any reasonable criterion."

I disagree that there was a "monopolistic market structure" in oil, tobacco, and steel, or that the leading firms behaved unreasonably toward consumers. Standard Oil competed with hundreds of rivals and its market share declined for a decade prior to divestiture; the price of kerosene fell from $2 per gallon in the early 1860s to less than 10 cents per gallon at the time of trial. American Tobacco—despite hundreds of mergers—competed with many hundreds of cigarette, snuff, smoking tobacco, and cigar rivals; tobacco outputs expanded enormously (as the lower court acknowledged) and prices generally declined between 1890 and 1911. U.S. Steel, as already explained, lost market share to smaller rivals because of the antitrust law; steel outputs expanded and prices fell between 1901 and 1911.

Scherer speculates that "progress" might have been more rapid "under alternative, more competitive conditions." What is meant precisely by "more competitive"? Should Standard Oil and American Tobacco have ignored vast economies of scale and scope in the manufacture of kerosene and cigarettes? Should Standard Oil and American Tobacco have shelved innovations in transportation and marketing because such changes might have enhanced their market positions? Should Standard Oil and American Tobacco have been less price competitive so that there could have been more competitors? How does restraining business rivalry create "more competitive" conditions?

Scherer frets about predatory pricing in the oil industry although the "court records and a seminal article" that I cite all dismiss such concerns. Scherer notes that the "Rockefeller papers provide evidence of predatory strategies" but he fails to cite any evidence that these "strategies" harmed consumers or the competitive process. Scherer worries about price wars and entry deterrence in the tobacco industry despite the fact that consumers—who enjoyed the price wars immensely—could have preserved competitors or created additional "entry" by simply ignoring the lower prices of the dominant firms. Scherer wants antitrust regulation to restrict competition in the name of enhancing "competition."

This perverse antitrust position is the result of confusing the competitive *equilibrium* with the competitive *process*. The competitive equilibrium assumes homogeneous product, perfect information, and an absence of change. Efficient resource allocation in that world means that the firms take market prices as given and attempt to produce an output that maximizes profits. Approximating that behavioral standard would be "effi-

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cient" but only if that is the fundamental "economic problem" "to be solved by competition.

An alternative view is to see competition as an entrepreneurial process of information discovery and supply adjustment under conditions of uncertainty.[14] The fundamental problem is not how to allocate "given" resources with everything known and constant. The economic problem for entrepreneurs is to discover which products and services consumers desire, and at what prices, and to discover how to supply those products and services over time at the lowest cost.

Scherer's concern about dominant firm behavior and even his antitrust views make perfect sense—but only in a perfectly competitive, equilibrium world. In a world of change and uncertainty, why would approximating repetitive behavior with a "given" technology be ideal? If consumers actually prefer differentiated products, why would approximating product homogeneity improve consumer welfare? If economic profits create incentives (and funds) for innovation, why would approximating zero economic profits promote efficiency? If increasing firm size or inter-firm coordination can lead to lower costs and prices, how does mandating "independent" firm behavior increase social "welfare"?

Scherer's first problem, then, is to explain why firm behavior in the static equilibrium model is in any way relevant to an evaluation of how business organizations have behaved historically—or how they should behave. Scherer's second problem is to offer convincing evidence that the dominant firm behavior that he regrets actually restrained trade and competition. Scherer's third problem is to persuade skeptics that antitrust regulation can micro-manage business behavior and improve overall economic performance. Scherer's final problem is to actually confront (and not distort) the argument and evidence in *Antitrust and Monopoly* that antitrust regulation has been employed repeatedly to restrain the competitive market process.

I agree with Scherer that those who wish to know what "economic analysis has to say about monopoly, competition, and antitrust, or to learn what actually happened in the industries at issue . . . would be well advised to read more widely." Given the errors that pervade the conventional wisdom about monopoly, I believe that *Antitrust and Monopoly* still fulfills an important need in antitrust education. But several important new texts also incorporate extended discussions of property rights, institutional structure, transactions costs, the modern theory of the firm, public choice theory and the actual process of antitrust policy.[15] These and other sources certainly should be consulted to discover whether Scherer's perspective or mine best captures the political economy of antitrust policy.

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NOTES

1. The origin of the book can be found in *The Myths of Antitrust: Economic Theory and Legal Cases* (New Rochelle, N.Y.: Arlington House, 1972) and *Antitrust and Monopoly: Anatomy of a Policy Failure* (New York: John Wiley, Inc., 1982).
2. *Public Choice* 41 (1983): 338.
3. F. M. Scherer, "Antitrust Past and Present," in *Antitrust Policy in a Free Society* (Hillsdale, Mich.: Hillsdale College Press, 1986): 77.
4. F. M. Scherer, "Antitrust: Ideology or Economics?" CRITICAL REVIEW 5, no. 4 (Fall 1991): 497–511.
5. F. M. Scherer, *Industrial Market Structure and Economic Performance*, 2nd ed. (Boston: Houghton Mifflin, 1980).
6. Roger Pilon, "Corporations and Rights: On Treating Corporate People Justly," *Georgia Law Review* 13, no. 4 (Summer 1979): 1245–1370; and Robert Hessen, *In Defense of the Corporation* (Stanford: Hoover Institution Press, 1977).
7. Scherer's attempt to distance himself from the structuralist perspective is disingenuous. The bulk of the Introduction in his text (1980) is taken up with a sympathetic explanation of the industrial organization paradigm first conceived by Edward S. Mason at Harvard. That paradigm is the familiar "structure, conduct, performance" approach where, according to Scherer, "performance. . .is said to depend upon the conduct of sellers and. . .conduct depends in turn upon the structure of the relevant market. . ." And while asserting a disagreement in part with the structuralist methodology, Scherer acknowledges "a heavy intellectual debt to the pioneering work of Joe S. Bain." See Scherer, *Industrial Market Structure*, 6.
8. Thomas J. DiLorenzo, "The Origins of Antitrust: An Interest Group Perspective," *International Review of Law and Economics* 5 (1985): 73–90. See also Thomas J. DiLorenzo, "The Origins of Antitrust: Rhetoric vs. Reality," *Regulation* (Fall 1990): 26–34. DiLorenzo's study is not cited in the 1990 edition of Scherer's text.
9. Ralph G. M. Sultan, *Pricing in the Electrical Oligopoly*, 2 vols. (Boston: Harvard Business School, Division of Research, 1974, 1975).
10. Ibid., vol. 1, 81.
11. Ibid., vol. 2, 344.
12. Ibid., vol. 2, 348.
13. Alfred D. Chandler, Jr., *Scale and Scope: The Dynamics of Industrial Capitalism* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1990): 134–6.
14. F. A. Hayek, "The Meaning of Competition," in id., *Individualism and Economic Order* (Chicago: Henry Regnery Company, 1972), 92–106.
15. William Shughart III, *The Organization of Industry* (Homewood, Ill.: Richard D. Irwin, 1990). See also Shughart's *Antitrust Policy and Interest-Group Politics* (Westport, Conn.: Quorum Books, 1990).

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F.M. Scherer

ANTI-ANTITRUST: IDEOLOGY OR ECONOMICS? REJOINDER TO ARMENTANO

Professor Armentano and I remain at odds on three broad fronts—philosophy, facts, and theory.

He insists that I perceive in his book philosophy where only the inexorable logic of economic theory exists. I demur. One of his most fundamental premises, repeated in his comment, is that subjectivism (a philosophical concept if ever there was one) invalidates the standard economic criticism of monopoly. True, economic theory provides no scientific basis for determining whether the transfer of a million dollars from consumers to monopolists is a good thing or a bad thing. Therefore, theory alone cannot prove that monopoly pricing is good or bad. But add a subjective *value judgment* (again, requiring some philosophical stance) and the dilemma vanishes. Armentano ignores a key step in my argument and the footnote citation to the New Testament that supported it. Let me quote the footnoted material in full:

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F.M. Scherer, professor of business and government, John F. Kennedy School of Government, Harvard University, Cambridge, MA 02138, telephone (617) 495-9510, telefax (617) 496-0063, is a former director of the Federal Trade Commission's Bureau of Economics. His most recent book is *International High-Technology Competition* (Harvard, 1992).

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> And Jesus sat over against the treasury, and beheld how the people cast money into the treasury: and many that were rich cast in much. And there came a certain poor widow, and she threw in two mites, which make a farthing. And he called unto him his disciples, and saith unto them, Verily I say unto you, That this poor widow hath cast more in, than all they which have cast into the treasury: For all they did cast in of their abundance; but she of her want did cast in all that she had, even all her living.[1]

In short, a farthing taken from relatively poor consumers has greater subjective value than a farthing lost (or gained) by rich merchants. Given this value judgment, the standard criticism of monopoly is *strengthened*. If the founder of one of the world's great religions could render such a value judgment, why is it inappropriate for the United States Congress to follow suit in enacting antitrust laws?

Professor Armentano accuses me of preaching structuralist economics. I have survived worse charges. But his "good first approximation" quotation from the concluding paragraph of my textbook's Chapter 2 misses the point. The last two sentences of that chapter say: "We therefore begin our journey into the following chapters with only a primitive map. Let us hope that we can avoid going too far astray, and end with experience useful in drawing a better map."[2] Armentano concludes his parallel Chapter 2 as follows: "In the chapters that follow, we will attempt to document both the fact that free-market monopoly is an illusion, and the fact that pernicious monopoly power can be associated with government regulation of the economy.[3] Thus, from his interpretation of economic theory, augmented by a particular philosophical stance, Armentano had already made up his mind. My "structuralism" was much more tentative, to be modified (as indeed it was) by further analysis of theory and evidence.

This leads to Professor Armentano's reading of the "facts." There are many disputed issues—far too many to cover in this brief reply. But let me focus on two central points.

For one, do real-world price-fixing arrangements raise prices at all frequently? My review presented two main historical counterexamples to Armentano's generally negative construction of the evidence.

One was OPEC, probably the greatest cartel in human history, which Professor Armentano did not examine in his book. Those who avow that government is the sole or prime source of monopoly power commonly miss the point of the OPEC example. Governments have sovereign power over their territories and their citizens, but one national government has no legally binding authority over other independent governments. In this sense, the relationship of Venezuela to Saudi Arabia as participants in a petroleum cartel is precisely the same as the relationship, absent antitrust sanctions, of Westinghouse to General Electric in an electrical apparatus

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price-fixing scheme. They meet, they quarrel, they agree, they cheat, they retaliate against one another, and they meet again to repair the damage. (I ignore here the use of military force, although violent retaliation is not unknown in the history of business cartels.) Despite facing all the limitations private firms face in fixing prices, OPEC was spectacularly successful from 1973 to 1986 in raising petroleum prices well above the levels that would have prevailed under competition. Other nations suffered mightily as a result.

A second example, electrical equipment, is one on which Professor Armentano places great stress. My review provided additional evidence of price-raising, but let us narrow the debate over the important Sultan research. In his reply, Armentano quotes Sultan's conclusion that the electrical firms' conspiratorial efforts were ineffective. That conclusion is from Sultan's Volume 1, published in 1974. It is based upon qualitative evidence and quantitative analyses that did not control for the host of demand, supply, and strategic variables affecting the turbogenerator makers' pricing. Volume 2, from which my quotation is drawn, was published in 1975. It undertook a much richer analysis of the data—indeed, one of the best such efforts ever published. Its principal objective was different—not to test the success or failure of the companies' price-fixing efforts, but to illuminate the strategic interactions among firms. As outside reviewer for the Harvard Business School Division of Research, I detected something Sultan had overlooked—that Sultan's equations showed post-conspiracy prices to be lower than they would have been, had conspiracy-period conditions prevailed. Sultan took this suggestion seriously and, using the (third version) statistical model he considered most suitable, conceded that the analysis showed conspiracy prices to be significantly higher.[4] In the pre-publication version, the underlying analysis appeared in the main body of the text. I do not know whether Sultan relegated it to Appendix 18 because the econometrics were so complex, because the price-raising issue was peripheral to the main concern of Volume 2, because the conspiracy finding contradicted the conclusions of Volume 1, or for some other reason. But wherever it was placed, it comes from Sultan's last and best shot at the evidence. To ignore it, as Armentano did, shows either carelessness or bias.

The other disputed factual issue is whether the turn-of-the-century "trusts" had monopoly power. There is rich historical evidence that the United States Steel Corporation, Standard Oil, American Tobacco, and others did possess and exercise monopoly power—to be sure, in widely varying ways. But economic theory teaches unambiguously that one cannot exclude the possibility of monopoly power from the fact that industry output rose, and/or prices fell. The proof is so elementary that I fail to

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comprehend how Professor Armentano can deny it. All that is necessary is for unit costs to decline over time (due e.g. to deflation, new oil discoveries, or technical improvements that would have been made by either competitors or monopolists), or for the strength and elasticity of demand to increase over time, or some combination thereof. The industry-dominating firm experiencing those conditions can set prices monopolistically in every period and still be expanding its output and reducing its prices over time. To rule out that possibility requires a factual inquiry more extensive and less constrained by philosophical preconceptions than the analysis offered in Professor Armentano's book.

NOTES

1. Mark 12: 41–44 (King James version).
2. F. M. Scherer, *Industrial Structure and Economic Performance* (Chicago: Rand McNally, 1970), 38.
3. Dominick T. Armentano, *Antitrust and Monopoly: Anatomy of a Policy Failure*, 2nd ed. (New York: Holmes & Meier, 1990), 43.
4. Ralph G. M. Sultan, *Pricing in the Electrical Oligopoly*, vol. 2 (Boston: Division of Research, Harvard Business School, 1975), 348.

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Jan Narveson

LIBERTARIANISM, POSTLIBERTARIANISM, AND THE WELFARE STATE: REPLY TO FRIEDMAN

Jeffrey Friedman broaches a number of criticisms of Libertarianism as a conceptual basis for opposing the extensive modern welfare state, examining several variants and concluding that they are fundamentally unsupported. He opts for a "consequentialist" view of foundations. Nevertheless, he thinks that the modern welfare state is subject to effective critique along such lines. But rational contractarian individualism works and does provide foundations for libertarianism, while "consequentialism" is an ill-defined theory that is quite unpromising for the proposed critique; nevertheless, Friedman's empirical and economic critique of the welfare state is valid.

In three important articles in this journal,[1] Jeffrey Friedman launches some important challenges to proponents of the minimal state via the political outlook that has come to be known in recent years as "libertarianism." That view has it that (for example) government intervention in the marketplace violates people's liberty, in the particular form of their property

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Jan Narveson, Professor of Philosophy at the University of Waterloo, Waterloo, Ontario N2L 3G1, Canada, telephone (519) 885-1211, ext. 2780, telefax (519) 884-8995, is author of *Moral Matters* (Broadview, 1993), *The Libertarian Idea* (Temple, 1989), and *Morality and Utility* (Johns Hopkins, 1967). Many thanks to Jeff Friedman for extensive comments on an earlier draft of this response.

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and other economic rights. Friedman will have none of this, thinking the whole outlook arbitrary, unfounded, and confused, insofar as it takes the form of "sweeping but unconvincing philosophical arguments—whether based on self-ownership, a social contract, or human nature—for the unmolested freedom of private property."[2] Nevertheless, he believes, the minimal state is the right general idea—not because a larger state violates rights but because it is an ineffectual and self-defeating means to reasonable ends, which perhaps we can describe without serious distortion as the general welfare. Friedman's view has the advantage that in his proclaimed ends, he is at one (or at least on the same wavelength) with the social democrats and socialists; his criticism of them is that they've got their facts wrong: the means they support will defeat these ends rather than forward them.

As one who has been philosophically inclined in recent years toward the very libertarianism Friedman decries, it certainly behooves me to respond to these challenges. In course, it also provides an opportunity to clarify the conceptual status of the libertarian thesis, and to raise some questions, in turn, about the basis of Friedman's proposed synthesis.

The main trouble with Libertarianism, in Friedman's view, is that its adherents have almost nothing of interest to say in its defense, especially against those who accuse it of sheer heartless head-in-the-sand ignoring of serious social problems, other than the mouthing of question-begging slogans, sterile semantics, and implausible or even downright offensive moralizing. The last, I think, is what bugs him most. Libertarians have spoken rather as though (their view of) justice should be carried out though the heavens, in the form of any amount of misery you care to name, should fall. I share with him the sense that such an attitude is to be classified with the pathological. What we need, in Friedman's view, is a frank recognition of the weight of what he calls the "consequentialist" case, and then a recasting of the case for the minimal state that makes sense in consequentialist terms. In this, as we will see, I don't know whether to say that I agree with him, for, as I shall argue, the category of consequentialism is too vague and too ambiguous to admit of clear answer. It has become customary among my philosophical colleagues in recent times to use a taxonomy of moral theories that divides them into two sorts—"deontological" or "consequentialist"—and it seems that Friedman buys into this dichotomy. Sorry. I shall try to indicate briefly why both of the two alleged views, at least as they are usually explicated, are hopeless, even though there are components of each that are useful enough.

In my consideration of Friedman's trenchantly written critique, I will appear to be swallowing the bait whole, in insisting that the Libertarian idea is still the right one. In fact, though, I will be questioning the validity

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of the purported opposition between a strict "deontology" and something known in the trade as "consequentialism." While that is an unworkable dichotomy, as I will point out, that very fact is enough to put "purely deontological" arguments, whatever they may be thought to be, down the tubes. But on the other hand, it does not automatically revivify what are usually claimed to be "consequentialist" arguments. Everything depends on which consequences, and to whom, count, and how they do so. And especially, *why*. That is where the action should be, as I shall try to show in this comment.

Libertarianism

So, what is Libertarianism? What is this theory that Friedman insists, for reasons I will comment on below, on referring to only in scare-quotes? It is, of course, the view that people should be allowed, all of them, to do, as nearly as possible, what they want. Not what St. Augustine or some academic theorist thinks they ought to want, but what they *do* want, for better or worse. It is, then, the view that the only "value" that should be pursued by governments is that of general liberty. But its exposition of that idea is different from many theorists who profess something nominally similar (e.g. Friedman, who "agreed with Fukuyama that on [the] level of ideology, the once-controversial ideal of equal individual liberty now has no universally plausible competitors").[3] According to the Libertarian interpretation, we are to understand this in terms of *rights*, specifically as stemming from a universal, basic right to liberty. What is further distinctive about Libertarianism is that this right is to be understood as exclusively *negative*, in a now fairly widely employed sense that I shall shortly try to make clear.

It will help still more, especially for readers not immersed in recent professional philosophical writings on these matters, if we step back for a moment, to specify what Libertarianism, and the views of Friedman and other political philosophers, are views *about*. It is, namely, a part but by no means all of what we may broadly call moral theory. That part concerns what we may call the *interpersonal rules of conduct*: interpersonal in the sense that they concern our relations to each other—what we may do to, and about, each other in society, that being the general (and arguably comprehensive) matrix in which people's actions affect and are perceived by others, especially *miscellaneous* others, as opposed to special-purpose others (friends, family, business associates, fellow countrymen, etc.). To put it that way is to contrast this domain with another possible area of life, one in which, as Mill puts it, a person's actions affect "only himself, or if it also affects others, only with their free, voluntary, and undeceived consent and

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participation."[4] On Mill's, and the Libertarian's view, that sphere of life is one over which society should have no *authority*—in which the individual in question is properly the sole authoritative determiner of action. Of course, whether there is any such sphere at all might be, and has been, questioned; and even if granted, there is a question of substantive principle and not merely of definition whether the Mill/Libertarian view of its moral status is right. But the *subject-matter* of this large branch of morals is that area of people's lives in which society—that is, *other* people, *do* (that is, should)[5] have authority. A theory on this subject is a theory about the proper grounds, extent and purposes of that authority.

Let's also be more specific about the notion of "authority" for this purpose. If A has authority over B in domain D, then B is to accept direction from A in that domain: A gets to tell B what to do. But there are different modalities to authority. The strongest one, and the one that Libertarianism is almost exclusively concerned with, is that in which the person with authority may, at least if necessary, employ force against those over whom he has it, in order to secure compliance with his directives. We may identify this narrowish area of moral theory as that of *justice*. Justice is what may be exacted, involuntarily if need be; in which the will of the individual does *not* rule, as such, but in which instead he must, whether he likes it or not, toe a line of principle, and may be made to if he is not so inclined. A requirement of justice excludes liberty in the domain of that requirement, as Hobbes pointed out.[6] (It does not, of course, exclude what Friedman's "positive libertarian" somewhat perversely calls "liberty," for of course if a requirement is just, then what it requires people to do is what they ought to do. For more on that, see below.)

Rights, Negative and Positive

Let us now return to the subject of "negative" rights and the contrasting notion of "positive" rights. For this purpose it will, again, be helpful to step back one remove and specify what is meant by "rights" in general. We have become much clearer about the idea of rights in recent years, and the most illuminating point made in the best recent analyses notes that a right is, essentially, a moral status of the person or persons having it which is such as to create or imply *duties* on the part of persons acting in relation to the putative rightholder.[7] We will ignore for present purposes, as being confusing and arguably pointless, the category of duties "to oneself"; what is essential to a right in social theory is that it entails duties on the part of *other* agents. For me to have a right is for there to be something about me such that *you*, or whoever else it is a right "against," has certain duties with respect to me. (When we proclaim fundamental human rights, these are

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normally rights against everyone. It is, of course, possible and usual for a person to be both a rightholder and a dutyholder in relation to others who have the same right.)

Negative and positive rights are distinguished by the corresponding types of duties to which they give rise. A *negative* right is one generating duties *not to* do various things, duties to *refrain* from various actions, and in particular, not to *interfere* with the actions, or property, or whatever is the subject of the putative rightholder's rights in the case in question. Negative rights are a sort of conceptual fence, with a bunch of signs telling all and sundry to keep off or to get clearance from the person in charge, the rightholder. Such rights would normally be satisfied by doing nothing at all: asleep in our beds, we fully respect our duty to refrain from murder.

By contrast, a *positive* right is one generating *positive* duties, which are duties to *do* something or other, rather than merely to refrain from various acts. One cannot fulfill them while asleep (though one might be asleep while others are carrying out the duties which you have managed to set them to discharge on your behalf). If you have the positive right to life, then I must not only refrain from shooting you, but also do what I can to keep you alive should your life be threatened by causes I could do something about, such as starvation, where I have "extra" food on hand. These are, in general, then, duties to *help* the rightholder.

A pure and unlimited social right to liberty would be a right generating exclusively and comprehensively negative duties on the part of others. If the holder of such a right wanted to do anything that conflicted with anyone else's actions, i.e., if the latter wanted to act in such a way as to preclude the rightholder's doing it, then that other person would be required to back down and permit the rightholder to do it. It is perfectly clear that such an unlimited right of liberty cannot be held by more than one individual, except by happenstance, and thus that a "theory" holding that everyone did have such a right would be completely incoherent. (The effect of trying to universalize the "divine right of kings" would be fairly close to this.)

But the Libertarian's idea is that we may nevertheless affirm a *general* right of liberty, in which, however, the rights of others limit our liberty, and our rights limit theirs. That generates a severe, and fascinating, conceptual problem: how can one person's right to general liberty be limited by another's similar right? Don't we have to canonize certain actions as, say, better or "righter" than others to make it work? It is, I believe, a problem that would be impossible to solve without moving to what Robert Nozick calls a "historical" theory.[8] On such a theory, the fact that a certain individual merely *happens* to be in a certain place at a certain time is, of itself, sufficient to generate duties on others to refrain from certain

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actions which they could legitimately have performed were that individual not there at the time. The first-comer's actions affect no one; newcomers could interfere with the first-comer and avoid this by keeping off the first-comer's area, or securing permission from him to enter it and do things there. (Lockean property-acquisition theory is the most notable example of such a theory in the classic literature, though it is by no means unique to him. On it, you do not have the right to this bit of land because, essentially, you deserve it or something of the sort; you have that right because here you are, no one else having been there before you. You might have stumbled on it by accident—indeed, that's quite likely. Still, it's yours, not mine.)

Negative and Positive Liberty

There is a relatively clear counterpart idea of negative and positive *liberty*: Individual A has "negative" liberty when nobody will actually prevent A from doing x if A tries; while A has "positive" liberty to do x if A not only faces no external obstacles, imposed by others, blocking A's efforts to do x, but in addition A *has the means* to succeed in doing x if A tries. If A has only negative liberty, but A lacks some necessary means to doing x, then his efforts to do x will not be successful. I may wish to highjump three meters, and nobody and nothing external *prevents* me—my negative liberty to do it is complete; but alas, I simply don't have the necessary strength and speed. (You can confuse and fudge these distinctions by saying that "lack of strength" is itself an "obstacle," thus draining the notion of an obstacle of its normal significance. Such maneuvers in social theory are rife.) Note that I have restricted these definitions to *socially* imposable obstacles or removals of same, because moral philosophy is practical—it is about what people are to do or not do.

I should note that this distinction is not neatly related to the ones made famous by Isaiah Berlin,[9] nor to the one designated by Friedman's term "positive libertarianism" (which I will address further below). Berlin depicts negative liberty in roughly the way I have done, but "positive liberty" in his accounting is "self-mastery," which he also equates with another distinction, "freedom from" vs. "freedom to."[10] If we then moralize the notion of self-mastery, though, we get pretty close to Friedman's "positive liberty"—liberty as doing what is *right*.

Extensive comments on these other distinctions aren't possible here, but we should note two points. First, all freedom is both "from" and "to": talk of freedom or its lack is always about (1) the presence or absence of some or other constraining conditions which render it impossible or possible for (2) the subject or subjects in question (3) to do

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something or other; which constraints, which persons, and which doings or havings have to be specified in context.[11] So no general distinction is possible on those lines. And second, it is of course true and important that when people act, they in general act to try to realize some value or other that they have. And in so doing, they are, and take themselves to be, governing themselves, both in the sense that it is they who make the decision whether to do those things or not, and in the further sense that it is their *own* ends or values that they are attempting to bring about, and not, or not merely, someone else's.

On those understandings, therefore, these other pairings, proposed by Berlin and Friedman, may give us distinctions without differences; and in the process, they are likely to obscure what the libertarian is interested in, and what surely does matter from the point of view of any individual: namely whether or not others are letting him live his life as he sees it and wants it to be. I think I am doing the best thing; someone else differs from me about that. Very well: but does he then suppose he may *make* me do it his way? If he does, does he do so on the ground that I am wrong? Well, then, let him prove it to me. And if he can't prove it—as he very likely cannot, values being the sort of things they are—then what we have is, from my point of view, an arbitrary exercise of power over me. Libertarianism is the view that that point of view, the point of view of *any* individual, is what matters in political affairs. The elimination of such arbitrary exercises of power is what the State should be for, if it is for anything. So holds the Libertarian.

In the special case where the reason why they (officials, say) won't let me act as I prefer is that somebody else claims to have a *positive* right to do something, my question is: why should I accept that he has such a right? Why *must* I help him live his life, just because he can't manage it on his own, or with the help of people who are *willing* to help? My being so required is a prima facie imposition on my freedom, certainly. The issue about the liberal welfare state is precisely that. The reasons why any particular individual would want negative liberty, which is secured by respecting negative rights, are obvious. But positive liberty, secured by positive rights, is another matter. For while it may also be obvious enough why someone would like to have what positive rights would give him, obvious why one might be delighted to know that others will help you out of all troubles, no matter how caused, it is not at all obvious why he should be willing to accept an involuntarily imposed requirement that he supply, at his own expense, what those positive rights demand on the part of those others. And telling him that unless he helps out, those other people won't be able to "be their own masters," or might be doing what isn't morally right, on somebody else's conception of what's right (or even

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if he shares it), is unlikely to persuade him. His reaction might well be, "Gee, that's too bad!" rather than, "Oh, I see: so *of course* I have to help him, whether I want to or not!"

A theory that our sole general right is the negative right to do whatever we will, consistent with the similar right of all others, might then be described as the view that we have a general right of negative liberty. However, there would be two serious pitfalls to avoid in so describing it. First, for this purpose we would have to specify that the only obstacles to action falling within the scope of the theory are those obstacles imposed by other *people*, and not those imposed by unhelpful nature. My liberty to swim might be blocked by the thousand miles between me and the nearest water; but my right to swim does not therefore entail the right that you transport me to the sea, removing that obstacle. It would, though, be a right that you not get in my way if I have a clear path to the water before me. And second, one would have to be careful to refrain from inferring that in this version, people are to be given a *positive* right to negative liberty. For that is a possible interpretation: the theory would then say that we all have the duty to help to *supply* people with negative liberty, say by going forth and making war against those who obstruct them. But this would be contrary to the intention of the theory as a maximum liberty theory. It is better simply to state the theory as holding that everyone has a general right to liberty, so that the only actions of anyone that can be, if necessary, forcibly constrained are actions which, in their turn, interfere with the liberty of still others. (As I will suggest below, I believe that the only way we can make such a theory work is by the recognition of property rights. People may do what they want with themselves and, therefore, with things that they have discovered or created, or acquired the right to via gift or exchange from others who were willing to provide them.)

Liberty and Welfare Rights

Positive rights, as we have seen, are rights not only to the forbearance of others but to their actual assistance, if needed. If you have the positive right to do x, but you can't do x unless you have item K, then if someone else against whom you have this positive right has or can get a K which he is able to supply you with, then your positive right would make it his duty to supply it. In the most important current sort of case, it is widely held that we have a positive right to a certain level of health; so if we get sick and need some treatment to become well, then others would have the duty, enforceable by law, e.g. via taxation and a health-care system, to provide me with that treatment in case I can't provide it on my own. By

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contrast, a *negative* right to health is a right that you not damage my health; but it carries no implication that should my health, due to natural causes or my own foolishness, fall below that level, then you must do something to get me back on my feet.

We should note immediately that even if it is accepted that people have an enforceable duty to help others, it may nevertheless not be a good idea to use any actual force in any particular case. Nor does it follow that we should resort to government action to supply the conditions in question. One may, and Friedman does, object to many programs as being ineffective or even self-defeating. Charles Murray's work, detailing how the "war on poverty" has instead entrenched and deepened the problems it was meant to solve,[12] is the recent *locus classicus*, and much other literature, notably in this very journal, is also highly relevant here. The practical effect of this empirical work could well recommend policies identical with those recommended by pure negative libertarians who deny that there is any such right in the first place.

Some have equated positive rights with "welfare" rights, but that is an error, though an understandable one. The level of welfare you currently enjoy may be protected *either* by a negative right, requiring the rest of us to refrain from activities that would reduce it; *or* by a positive one, requiring us to *restore* you to that level if we can, should you, for reasons of accident or whatever, fall below it. These are conceptually, and in general actually, distinct.[13] Likewise, a right to liberty or to any particular liberty, to *do* what you want either in general or to undertake certain particular sorts of activity, can be *either* negative, forbidding people from preventing the rightholder from doing it, *or* it can be positive, requiring people to help the individual out in case he is unable to do the thing in question from his own resources. So, such a right imposes duties on others to provide people with the (or some particular) means to do or pursue the things that theory grants them positive rights to, if the rightholder in question can't already do them under his own steam or with means provided voluntarily by other people.

But a moral theory recognizing only negative liberty as a basic right imposes no such duties. That is the great difference between insisting on liberty as a right and holding it up as a "value." As soon as we do the latter, we are likely to be into imposing this and that on people (taxes usually) in order to *promote* that "end." But insofar as liberty is a right, you "promote" it basically by respecting it, that is, by *not* interfering with the liberties of others; any other sort of promotion goes beyond what the negative right, strictly speaking and of itself, involves.

Of course, what we are allowed to do by virtue of the scope of negative rights in a Libertarian theory includes the right to make an arrangement

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with others wherein duties are accepted, undertaken by some to supply others in the association with, say, health care, perhaps in return for payments or the like. It is of the essence of a Libertarian theory that we have the right to make such arrangements, and it is to be hoped that we will make extensive and intelligent use of those capacities. But until we enter into such arrangements, we do not have those positive rights. A welfare *state*, by contrast, is an *in*voluntary arrangement to similar ends. Similar, but, we should note, not identical, unless by accident. For the welfare state must supply more health care for all than the market would, and so supply it *whether or not they would have been willing to buy it at the price imposed*, and at cost to everybody, whether they are willing to pay that much for that purpose or not. This simply exceeds the reach of negative rights, and therefore, I hold, of liberty. For it must be obvious by now that positive rights essentially conflict with general negative rights to liberty. If we may do as we please, only respecting the similar freedom of others, then we may *not* be required to help others out, however nice it would be of us to do so.

Friedman's "Positive Libertarianism"

At this point, let us attempt to relate what has been said to Friedman's views. What, in particular, should we say about what he calls "positive libertarianism"? By "positive liberty," what he (says he) means is "the freedom to do *what is right* [my italics]. . . To refer to positive liberty is . . . to recognize the fact that we would not do what is wrong unless we were compelled to—whether by uncontrollable desires or by a failure to perceive what is right. . . . True freedom is positive in the sense that it includes freedom from what may appear to us as given, or posited: our impulses, our inclinations."[14] On this usage, then, "positive liberty" is defined as the absence of constraints against doing what it is *right* to do, and in particular, the absence of *internal* constraints, items in the psychological makeup of the agent.

That is, I think, an extremely confused and confusing usage in all these contexts, for several reasons. In the first place, and crucially, it is not a substantive normative theory, as it stands, but at most a theory about what we may call the conceptual structure of morals, or perhaps about moral psychology. Is it possible for an agent to do, intentionally, what he himself regards as morally wrong? Socrates notoriously held that he cannot. Aristotle, equally notably, criticized the Socratic view, opting for the majority view among philosophers, who have noted, over the last couple of thousand years, that there is an extreme air of paradox about the idea that people can't really perform wrong actions—even if the thesis meant only

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actions that they themselves think are wrong (as would be the only remotely plausible interpretation). Life doesn't seem to be like what this view seems to say it's like. People do seem to do what they agree is wrong, sometimes intentionally, deliberately. But how *can* they? It is an interesting and intriguing question in itself, but notice that it is one which cuts across all theories of normative ethics. Such theories try to tell us, not merely what it means to say that something is right or wrong, but also what actually is so—what, in short, we ought to do or not do. The information that whatever it is that turns out to be wrong, we can't do it voluntarily once we realize that, may be interesting, but it doesn't yet tell us what to do. Libertarianism, however, certainly is intended to be such a normative theory.

Nor is it at all clear, as I say, what "positive libertarianism" *does* tell us. With a bit of interpretation, I think one might extract a very important component of the meaning of the words "right" and "wrong": viz., that to be right, an action must somehow be prescribed by the agent's overall ensemble of rationally considered interests. I think that's right, to be sure, and that it plays a crucial role in the foundation of morals. But it's still not a directly normative moral claim. Whereas Libertarianism is such a view, a view about what *is* right and wrong. Aggressive force and fraud, it says, are wrong, and anything else is right in my "weak" sense distinguished at the outset, that is, permissible. The view Friedman calls "positive libertarianism" doesn't conflict with that theory, unless perhaps it conflicts with all theories by denying the obvious about people—except for the looming possibility that is discussed next.

This other worry may be formulated as the charge of what I shall call, for want of a better term, *moral totalitarianism*. By this I mean the view that every possible action for any given moral agent is either morally *required* or morally *forbidden*; nothing is merely *allowed*. Thus, that there simply is no realm of liberty, in the sense in which libertarians and liberals of all normal sorts have wanted to defend it. In holding that one *only* acts freely when one is doing what is "right," one may seem, at first glance, to be holding just that.

But this is due to a confusion. For the term "right," in everyday discourse, is ambiguous. It can mean either (a) in what we may call the "weak" sense, that the act in question is morally O.K., that is, *permitted*, *allowed*; or (b) the corresponding "strong" sense, in which the act in question is morally *required*. (These, by the way, are all helpfully interdefinable in terms of the single concept "wrong." To say that an action is right in what I have called the "strong" sense is to say that *not* doing it is *wrong*; whereas to say that it is right in the "weak" sense is to say, merely, that doing it is *not wrong*—leaving open the logical possibility that not doing it

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isn't wrong either. Hence the realm of moral freedom, in which we may do, literally, whatever we please among these morally neutral actions, is a clear logical possibility. Note that the claim that we "may" do them, on the other hand, is *not* morally neutral. On the contrary: it is quite definitely a moral claim, namely the claim that nobody may stop us from doing them—that interference with them, specifically by force or fraud, is *wrong*.)[15]

Friedman confuses matters by telling us that "negative liberty is freedom from having our wills negated; it is also the freedom to do what is negative. It is in the nature of a right (an absence of restraints) that it allows its possessor to do what is morally wrong."[16] In this, he seems to have made another mistake, for plainly, at the level of definitions, no such thing follows at all. "Freedom to do what is negative" should mean, on the face of it, simply the freedom *not* to do something as well as to do it; and if that thing is neither morally required nor forbidden, then there is no interesting question of the kind he asks next, putting it into the mouth of the "positive libertarian," who, he says, "asks: Why should we grant moral standing to the freedom to do what is wrong?" The short answer is, of course, that in the main sense of "wrong" that we are concerned with here, the "strong" one, we obviously don't have such (moral) freedom, by definition: wrong actions are precisely those you may be prevented from doing. Nevertheless, we can grant people the freedom to do whatever they like so long as it is not itself wrong, for instance wrong, as on the Libertarian view, by virtue of being an incursion into the legitimate liberty of others. But there are millions of things we can do within such limits: part our hair on the left—or not; pick vanilla over chocolate—or vice versa; or even pick Horowitz over Rubinstein—or the reverse. No matter which among the alternative possibilities we choose in this area, which on the Libertarian's view is vast, we do what we have a perfect right to do. For others to intervene into such choices, forcing us to do one thing rather than another, is for them to violate our rights, to do what is wrong; and this *no matter which* we were forced to do.

If Friedman's positive-rights characterization employs the *strong* sense, as it surely should, then the effect is to identify *liberty* with the doing of only those actions that are *morally required*. That's a strikingly bizarre result, relative to the usual sense of "liberty" in social contexts, when you consider that in those contexts, the whole point of saying that something is *required* is that you *don't* have your choice about it—you aren't to be at liberty not to do it. On the other hand, though, if his characterization uses the term only in its *weak* sense, then positive liberty is really identical with negative liberty and there is no disagreement. For it then says that we

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should be free to do only whatever we are allowed to do, which of course is true by definition.

So the view that he seems to want to identify with "positive libertarianism" is either guilty of begging a very important question, viz., whether there is any area at all of real liberty in the usual sense, that is, any sphere of action in which you may do *whatever* you like, it being morally permissible for others neither to force you to do nor to force you not to do the action in question; in which case it takes a mindbogglingly restrictive, thus (as I put it) totalitarian, view about them. Or it says, in effect, nothing at all. Whether or not Rousseau and the others Friedman attributes this thesis to do really hold it, I am at a loss to see why we should employ the term "libertarianism" in any such sense, and am concerned about the confusion that it must engender if employed thus in current-day discussions.

In any case, as I say, it's clear that the definition of positive liberty given by Friedman only applies via an *antecedent* theory of what is right and wrong. But Libertarianism, as usually conceived, is itself a theory of right and wrong (though only a partial theory, viz., a theory about what is wrong in such a way as to justify forcible rectification). It says that what's wrong is intentional violation of liberty, which it equates with the use of force or fraud, in brief; and that *anything* else *is* permitted or allowed. And so it holds that one cannot use force to prevent someone from doing what is right in the weak sense. But *of course* it holds that one may use force, if necessary, to prevent someone's doing what is (seriously) wrong. That, indeed, is the point of calling it "wrong," as Mill observed.[17]

Some theorists have indeed wanted to insist that we have a "right to do what is wrong," but clearly they must be using the term "wrong" in a narrower sense than the main sense figuring in the foregoing discussions. This is a definable sense, to be sure: it can refer to what is disapproved, though not to the point where force may be threatened to prevent or rectify action of the kind in question. "I don't approve of your choice, Johnny, but you do as you like," is a typical case in point. The word "wrong" in this sense would be confined to contexts where the user intends reinforcement by admonishment and/or by withdrawal of services or affection, etc., but stopping short of outright coercive force. In this quite reasonable meaning of "wrong," the libertarian of course says that we have a right to do wrong. I am sure, for instance, that some Libertarians regard homosexuality as "immoral" in this narrower sense. Nevertheless, they are against the legal prohibition of homosexuality. "I may disagree with what you say, but I shall defend to the death your right to say it!" is a related example: it expresses epistemic disapproval alongside strong and principled moral permission, protected in fact by a right.

We should be clear that this sort of "freedom to do what is wrong" is

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also a *moral* right, not some other kind of "right." Of course the libertarian's liberty is also the freedom to make mistakes, to do what turns out to be worse for oneself or even, in some respects, for others, and certainly (which is crucial) to do what others don't approve of. Perhaps it is too bad that our moral vocabulary is so messy, but the theorist's job must be to try to sort out those portions of it needed for his or her purposes, and especially not to try to bludgeon us into accepting his preferred normative theory on the basis of what are in fact merely definitions. Friedman, in particular, is welcome to have a term such as his "positive libertarianism" to designate the *view* that one is, in some favored sense of "free," free only if one does what one believes to be right. But to try to make this true by definition of the word "freedom" would be pointless and confusing. Had he not been somewhat guilty of this, though, then he could have addressed the thesis that I wish to uphold and, so far as I can see, is maintained by most of those who have claimed to be (political)[18] "Libertarians." Nor is it yet clear (and it does not follow from anything Friedman says on the opening pages of the article from which I have been quoting) whether Friedman accepts the moral view that I have been explicating and tagging as "Libertarianism"; though one supposes not.

Morals and the Soul

There is one other possible confusion to take note of in this discussion. I have thus far characterized the area of morality in which the present discussions fall only as that of *interpersonally authoritative general rules*. Actions conforming to those rules would be held by the theorist (or whoever) who accepts those rules to be "right," and those contrary to them "wrong." However, many moral theorists, such as Kant, would want to insist that right action isn't a matter of mere "external" conformity. Kant makes a distinction between actions that are "in accordance with" the "Moral Law" and those that are actually done *from the motive of* conforming to it.[19] Only the latter has "true moral worth," he wants to say; such actions get you a special sort of moral brownie points, whereas merely doing what the Moral Law requires, but for cruddy selfish reasons of your own, gets you none. However—and this is what matters for present purposes—Kant fully agrees that mere external conformity *is* enough to keep you out of jail. Not only does it do so, but it *should*. That is, Kant also thinks it is wrong to jail people merely for not having saintly, morally super-hotshot intentions. External conformity is quite enough, for that purpose. Here, then, is another sense in which we can coherently suggest that people have the "right to do what is wrong": for so long as they do not murder, cheat, steal, lie, and so on, then we may not forcibly intervene

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to bring their motives into line as well, even though the motives they actually have may be worth no purely moral praise, and might even be worthy of some moral disapproval. The man who refrains from killing only because he fears capture is a far worse man than the one who refrains on principle; but both must be adjudged Not Guilty when it comes to deciding whether to send them to jail.

This may be a good place to respond to Friedman's response to Berlin's criticism of "positive libertarianism." "Berlin agrees with the positive libertarians that positive liberty is freedom to perfect oneself morally, and therefore claims that any positive libertarianism which presumes to 'force people to be free' contradicts itself by paternalistically denying the individual the right to perfect him- or her*self*, i.e. to attain moral perfection voluntarily. But . . . self-perfection mixes together one possible means of achieving positive freedom—a self that is free from external constraints against taking the right action—with its end (the right action itself)."[20] But this moralized characterization of the end of action is just out of place. We do *not* go to the races, drink beer, chew gum, or wear funny hats *in order to be moral*—in *order to* exemplify "rightness." We do such things because they are interesting or fun, and those are not *moral* values, but simply *values*, miscellaneous: e.g. aesthetic or social. Moreover, they may well be values not shared by others. But their reason for keeping off our backs while we engage in these frivolous or at any rate not *morally* charged pursuits is not that they are thereby promoting The Moral Good—which in their view they probably aren't—but rather, because it is a rational arrangement between us and them, advantageous to both, that they should let us do whatever we like as long as it doesn't *harm* them, in return for which we will similarly respect their liberty to engage in whatever odd activities they may happen to like. This gives each of us the maximum area in which to do what we like.

Friedman continues, "Surely there are other means than freedom from external constraint by which right actions can be achieved. Someone can, after all, be 'forced' to do what is right."[21] But the point is that freedom is *not* a "means to right action." For one thing, refraining from invading and despoiling the domains of others is not exactly a "means to" right action, because it simply *is* right action (or, usually, inaction).

It is also true, as Friedman notes, that we may be forced to do what is right—pay our debts, say. But here we can link up with the Kantian point. For it is better still if we are disposed to pay them *without* force being exerted, thus saving trouble for us all—you in having to allocate that force, and me in having to fear or suffer from it. Kant's emphasis on the inner motivations of the soul is perfectly in place in this regard. Doing what is right (and especially, avoiding what is wrong) should be spontane-

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ous, for that saves administrative costs, to the general good. Note that "general" here means both yours and mine, and therefore mine. Its being general means that we both have an interest in it, and thus that I can reasonably expect you to comply as well as myself; altruism, as such, is not required. But the advantage of action from good inner motivation as compared with action exacted by expensive authorities is obvious, on reflection.

Friedman then makes an important complaint about Libertarianism. Having, as he thinks, saved what he calls "positive libertarianism," as "the paradigm of liberty as freedom from the constraints that prevent one from acting morally," from any charge of internal inconsistency, he asserts that

> the same cannot be said, however, for the paradigm of negative liberty. We have just seen that *in general*, it does not make sense to value freedom of action if one does not value, *even more*, the morality of the action one is free to perform. But there is another contradiction in negative libertarianism: the fact that it bounds one person's negative freedom by that of another. If rights are equal, such that my freedom of action does not include the right to kill you, this must be due to the stipulation that there lies in you a higher moral value than my untrammelled liberty. . . . In other words . . . there is *some* higher morality than freedom of action; there is also a specific content of that morality: egalitarianism.

And he adds, "The same logic that leads me to respect your negative freedom would seem to impose obligations that violate mine. If you are entitled to my respect, why not also to my care?"[22]

This passage ends with an extremely important question, to which I shall return. But in the main, the passage seems to be indicative of Friedman's persistent refusal to recognize the possibility that morals can be rational without being intuitionistic, or in some other way high-flown—which is to say, in my book, that he doesn't recognize the possibility that they can be rational, period. My *reason* for extending rights to you and then respecting them, can be and I insist is, that it's better, all things considered, *for me* if I do so. Again, not "morally" better, but just *better*. Better because in my not having to worry about your invading me, I can get the things done that I want to get done—more of them, and done better. If I can spend eight hours farming instead of two hours plowing plus two hours making weapons, plus four staving you off (and maybe getting my head bashed in in the process), I am ahead, and so are you, for you then likewise need have no fear from me, and you too can save the time spent in predatory activity. Morality is the agreement between us that we shall each refrain from such interferences—*even when one of us could "successfully" violate the restrictions*. This last is essential. For if we only kept the agreement so long as we couldn't get away with breaking it, then both

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of us would be back to spending more time on the watch and less at the plow: we couldn't trust the other one to do his thing once our back was turned.

My account does assume, to be sure, that the plow is more important than fighting. But that too is not a matter of "morals." It is a matter of our general judgment of what makes one's life a good one. Friedman may want to count that a part of morals, of course, but I don't, and in a clear sense most people don't. If one does so, then one has the problem that *whenever our personal values differ, our morals differ too.* And then he has the problem of explaining how he could possibly find anything basically wrong with paternalism. Morals is about socially valid rules. If the basis of those rules is "the good," and we differ about what is good, then plainly my duty is to compel you to do what is good, which apparently I know and you, for some reason, don't. The liberal, however, has no such problem. The trouble with paternalism is that I don't *want* to live my life by *your* views of what's good for me, nor do I want to be required to pay the costs of ministering to you. But nor do I want you continually harassing me. An agreement to keep off each other's backs will do the trick; fancy talk about The Good will not.

There is thus no need for moralism of the sort Friedman seems to think is presupposed by individualistic egalitarian negative libertarianism. For it simply isn't. And there is no mystery why we do not need to cross the line from respecting your negative liberty to participating unilaterally in care projects for you. For both of us can see that there just isn't any reason, from my point of view, why I should do so, while also agreeing that if I happen to want to do so because I like you so much or because I have bought some religion's or some ethical code's doctrine that that's my *personal* duty, that's just fine.

This fixation on totalitarian moralism manifests itself again in Friedman's comments about "individualism as a form of authoritarianism": "Inescapably, human beings are called upon to choose *actions*; negative libertarianism, however, chooses only moral *authorities*."[23] This would be puzzling in any usual sense. *We* of course, as individuals, choose actions; *theorists*, in their business of theorizing, formulate principles, identify categories of right and wrong, and may while they're at it determine who or what has what sort of authority. But why should there be anything wrong with that? It seems as though Friedman here assimilates the functions of the individual qua individual to the functions of the individual qua theorist, e.g. libertarian theorist.

The answer lies in his next sentence: "One must inevitably decide what to do—i.e., what it is right to do."[24] But why the "i.e."? People decide what to do in the light of what they think would be *best* to do, indeed: best way

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to get around that tackle over there in a football game, best way to give Martha a surprise party, best tie, best sexual partner, and so on. In none of these cases do we have primarily in mind what is *right* in the interesting ("strong") sense I have distinguished. But "deciding what's right" in the *weak* sense is simply too easy, and also doesn't resolve our problem. Morality simply has nothing to say about the color of ties; it tells me (if it knows what it's doing) that I may, literally, choose whatever color I like, or not wear them at all, for that matter. But of course there is reason to refrain from *wrong* actions, which are those that would not be permitted by a general rule acceptable to all concerned. Thus, we should constrain ourselves to choose only willing sexual partners, only ties that aren't stolen property, only to stiff-arm players rather than referees, and only players while playing rather than during timeouts; and so on. I do, of course, take it that the resulting situations are preferable to the situations in which we all simply do as we like without thought of others. But this also, as I say, is no more a peculiarly "moral" betterness than the various pleasures or satisfactions motivating the original activities. Morality comes into it from the interactive aspect of activity. Actions are wrong when they are forbidden by rules that it is sensible, each from our own various points of view, to accept as constraining us in certain directions; and what makes that rational is that we'll do better thus.

Friedman is, of course, entirely right to say that attempting to found morals on the will of God, say, or to lodge its source in some other arbitrary authority is entirely misguided. Authoritarianism in morals is a dead end, and indeed leads inevitably to more conflict among humans subscribing to rival "authorities"—Lutherans warring with Catholics, Muslims with Jews, and so on. But it simply doesn't follow that some highflown intuition about superior "moral" values, occupying a separate realm from our mundane interests, is required to fix things up. Especially because it *won't* fix them up. For intuitions will conflict just as will "authorities"—there is no fundamental difference.[25] A contractarian process of agreeing on who may do what is what's needed instead. *Only* it, I think, offers theoretical hope of a rational morality.

Nor is there any "fissure" of the type asserted later in the same discussion: between Libertarianism's "insistence on the freedom of the individual agent from external coercion . . . and . . . its stubborn indifference to internal, moral coercion (which, if recognized, would reveal the arbitrariness of the individual's moral authority)."[26] For there simply is no such indifference. As I have argued above, internal, moral "coercion," that is to say, the operation of internal inhibitions against breaking rules that invoke useful prohibitions, is just what we need, as being much preferable to the

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external coercion that is the next-best device, and still more to the total "liberty" of a state of nature.

In examining what he characterizes as "negative libertarianism" Friedman asserts that "it is just as empty to grant moral authority to the arbitrary decision of every individual as to grant it to the arbitrary decision of a single individual or class of individuals."[27] It is not clear why negative Libertarianism should have to do some such thing, though very clear why it shouldn't, as I have been trying to show above. Friedman goes on to say, "It is no answer at all to the question posed by moral choice—'What *should* I do?'—to reply, 'Whatever you *want* to do.' For then the question (which negative libertarians, ironically, must deterministically evade) becomes 'What *should* I want to do?'"[28] But this gets it all wrong, first by loading the dice with the description of choice situations as always involving *moral* choice, which I have complained about above. And even in those cases, in fact, frequently the *right* answer to the question, "What (morally) should I do?" is, indeed, "Whatever you please." If you don't know what you please to do, then you may indeed have a problem, and you may need to get into a therapy mode to try to figure out what your bottom-level, underlying preferences are. Or maybe you should just take a nap—when you wake up, perhaps you'll feel like doing something. Below a certain level, after all, there simply is no answer to the question "What should I want?" Dangling visions of a Better World, of the dignity of rational beings, of a god who cares for us all, and so forth, before the jaded eyes of the totally depressed is useless; and dangling them before the eyes of the normal person who has his own interests to pursue is both unnecessary and, in plenty of cases, just offensive.

On the other hand, there are often other, and frequently easy answers to the question "What should I want?" If you go in for assassination, grand larceny, rape, extortion, and so on, then there is a very good reason why you should not want such things: for your attempt to engage in them will give others the most excellent reason for doing their best to foil you, permanently. This is indeed a subtle answer, and it does take more than two-year-old intelligence to see its weight. It takes a fairly mature person to appreciate that actions conflicting strongly with others' courses of action invite reactions that will make things worse for all, including you, and that relying on authorities, such as the police, to enforce rules against them just adds to the costs. It is not surprising that most moral teaching takes the form of simple directives backed by parental or priestly authority or peer pressure. Not surprising; but for the thoughtful, not satisfactory either.

"Worse" in the foregoing, as I say, just means *worse*; it does not mean "morally worse." To repeat: moral rules are grounded on the interests of

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people living in societies, and those interests are for the subjects of those interests, that is to say you and me, to weigh and rethink as we will. If we were gila monsters or blobs of guck, things would be different, no doubt. But given that we are the sort of entities we are, we shall find morality, that is, an assemblage of requirements and admonitions ultimately to be internally controlled by the very people whose actions are to be controlled by them—useful and indeed essential.

I hope that readers will not be possessed by the sense that this has been just one long quibble about words. Alas, such quibbles are inevitable if we are to avoid confusion. I confess to being puzzled, on the historical face of it, why the term "libertarian" is used at all by Friedman to designate the theory he calls "positive libertarianism"; and it is symptomatic that he then has to put the term as it is normally employed in quotation marks, or qualify it with some such epithet as "radical"—thus managing to imply that the view in question is some kind of perverted or incoherent version of something else, rather than a relatively coherent view in its own right, to be discussed as such. I have argued that this is all wrong. And it is not unimportant. It is of the essence of Libertarianism in this normal sense that there is, in particular, no fundamental, enforceable obligation on people in general to supply others with any particular level of welfare, just as such, though there are strong obligations to respect their persons and property. Such a view, of course, would question the welfare state at its conceptual base. Friedman's arguments are evidently designed to show that it is internally incoherent to hold to Libertarian constraints without also going for positive welfare rights (in my sense, of course). Sorry: that case simply has not been made good in the critical passages from Friedman's essays that I have been concerned to examine above.

Friedman on Libertarianism: Circularity

Friedman identifies a view, which he ascribes to Rousseau, that he calls "radical libertarianism," by which he means a view that holds both what he calls positive libertarianism and also that negative freedom is right. This, he argues, must be *circular*: "According to the radical, then, we should be free to do what we want: we should be moralized to want what is right; but furthermore, what is right is universal negative liberty—under which everyone is free to do what they want (which is to do what is right). The circularity here . . . derives from the importation of the ultimately vacuous morally authoritarian premise of negative libertarianism into positive libertarianism's attempt to fill the vacuum with moral substance."[29] It seems that Friedman thinks that we *have to* accept "positive libertarianism" in its own right, as being conceptually inevita-

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ble, and thus that the position he ascribes to Rousseau would have to be the position of any contemporary Libertarian, e.g. myself. I have shown, I think, why this is not so: positive libertarianism as he describes it is so far from being self-evident as to be downright bizarre, if we take its thesis in terms of what I have called the "strong" sense of "right," while in the weak sense it says nothing at all. But it is worth discussing his argument here anyway, for it may nevertheless seem effective against the sort of view I am trying to defend here.

It would indeed be circular to say, just like that, that freedom is doing what is right and that doing what is right, in turn, is acting freely. But Libertarians do not say that, or anyway shouldn't. They suppose that we can identify, *without* an antecedent moral theory, what constitutes use of force, and identify such use as interference with the freedom of the person against whom it is used, thus noncircularly carving out a moral position. Persons who think that this can't be done had better be aware of the morass that faces them in the construction of any other theory (try, for a few minutes, to identify *what* it is that you want to say is a wrongful use of force if the term "force" cannot be defined without, in turn, employing the notion of wrongfulness); but at any rate, Friedman says nothing to indicate that it can't be done, unless you count just waving the word "right" around as something along that line. As a matter of fact, much of his essay, so far as I can see, uses the term "force" in this basically neutral way, as do most of us most of the time.

Does the view he ascribes to Rousseau make any sense? Of course, as I have pointed out, if you claim that free action is right only in the weak sense, and then claim that people have the right to engage in free action, thus implying that they do not have the right to interfere with the free actions of others, then you can be off and running. Now if we can indeed noncircularly and without a moral theory identify what constitutes force, then a theory saying that the use of force is wrong is not obviously circular. Nor is it circular if it goes on to say that the use of force is nevertheless right if it is used to prevent the antecedently identifiable use of force against persons who in their turn have not employed or are not in the way of employing it. To see this, you need also another distinction, not yet employed above but familiar in contemporary philosophy: that between "prima facie" and "on the whole" moral judgments.[30] Prima facie judgments are incomplete; they tell us what is the case "on the face of it," prior to a complete accounting in which other aspects of the action might come to light. Free action is prima facie weakly right, but if it interferes with the free action of another, then the first action is now prima facie wrong. If there are no further complexities reversing this verdict, it stands and the act is now reckoned to be wrong not just prima facie but "on the

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whole," or "all things considered." (Of course there is the fundamental question of deciding which action is to be reckoned the interfering one; but this is not obviously insoluble. The theory of property acquisition is the essential aid in such cases, I believe.)

On the other hand, there is a threat of circularity in some familiar arguments trying to convict the Libertarian of inconsistency. It may be exemplified in another passage from Friedman. Negative liberty, he says, "is freedom from external coercion, as well as from deficiencies of the necessary means or power to do what we will—when these deficiencies are caused by human beings or human institutions."[31] Now, when someone is said to have a deficiency "caused by human beings," we have to ask what sort of "causes" he has in mind? Consider someone who, for instance, is born blind or minus functioning limbs. These are reasonably accounted "deficiencies." But suppose someone says that the real deficiency lies in the failure by other humans to design or supply suitable prosthetic aids. If that is counted a "constraint" on the child's liberty and thus a violation of her negative rights, then the distinction between negative and positive has been violated before we begin.

In other cases, where, say, the "deficiencies" are due to unemployment, or to just failing to do the things necessary to secure the relevant means of action, to say that those deficiencies are "caused by others" is to say that the *nonactions* of others "caused" them. But plainly this is not "causation" in the usual sense. Were the nonactors all in Australia at the time, or dead, they would have been just as *inactive* in the relevant sense, but could hardly be supposed to be thereby "causing" the deficiencies in question. Which means that the critic would have been assuming that those others, the ones who could have hired the people in question but didn't, for instance, are *supposed to be* providing those means, i.e. that they have a positive duty to supply them—*that's* why their "negative freedom" is infringed by these others' nonactions. Again, the relevant distinction between doings and nondoings has been obliterated. That's precisely what libertarianism *denies*, and precisely what defines this sort of right as positive, not *negative*.

This kind of argument may not be intended at all by Friedman in those passages. I discuss it here partly because it is so widely employed in one way or another. I don't suppose there is any more potent conceptual motivation for supposing either that Libertarianism is internally inconsistent or that it is really a disguised sort of welfare liberalism than this one of making out that in some cases, negative somehow ends up meaning positive. But it is conducive to conceptual clarity, at least, to try to keep these things straight.

But it may also be lurking beneath the surface, e.g., in Friedman's suggestion that "the same logic that leads me to respect your negative freedom

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would seem to impose obligations that violate mine. If you are entitled to my respect, why not also to my care?" Well, if someone supposed that not extending Medicare is itself a *form* of "violence," then of course that same "logic" would indeed lead both to prohibitions on force and to Medicare; lack of Medicare would be accounted a species of "force." It isn't, though, and once such subtle (or not so subtle) assimilations are avoided, we can return to the *logic* of Libertarianism, at least as I see it. That logic is our interests, which often enough and basically is self-interest, and in any case not some kind of fancy moral view. And self-interest certainly impels us to prohibit violence, but it does not obviously impel us to embrace Medicare. Prohibiting violence by and on the part of all is a good deal; requiring aid for all from all is not.

Which, of course, brings us again to the question whether there is really good reason for confining ourselves to negative rights. A certain amount of what I have said thus far is intended to show that. But Friedman has other major complaints to concern ourselves with in this connection.

The "Idolatry of Freedom"

Friedman attributes to the Rands, Nozicks and Rothbards a sort of nihilism. So far as I can see, he supposes they share with the "positive libertarians" the supposed fault that "their political activism, like their study of society, had lost sight of the only logical *reason* for such action—*achieving moral ends*,"[32] leading to a sort of "idolatry of freedom";[33] this sort of libertarianism, he thinks, has the implication that "*such consequences as prosperity are utterly beside the point*."[34] There is some excuse for thinking such things, since after all Nozick, who is for almost all contemporary Anglo-American academics the paradigm Libertarian, both offers no foundations for the Libertarian thesis, and also sometimes expounds it as though no amount of evil consequences can count against some "right" act. (Rand, who is well out of the Anglo-American professional philosophy mainstream, might be thought to do so too, in a way, but I won't discuss her ideas here.) However, it's urgent to make clear that there is no logical connection between Nozick's attitude and Libertarianism. More importantly, there is no need to set up a dichotomy between the "side-constraint"-oriented, "deontological" theory of Libertarian rights and the prosperity-oriented outlook that, as Friedman points out, all Libertarians have also shared, at least in practice. I will, however, argue that the latter isn't at all accidental, is by no means just a matter of what they think "in practice." Of course all of us political theorists, of whatever stripe, surely think that our views, if appropriately put into practice, would make for a *good society*, better than the one we have. And surely none would think it

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perfectly O.K. if his or her theory implied that it would be better even if there were a lot more hungry, sick, or miserable people in it. The question is whether the Libertarian has anything to offer that avoids that prospect in a principled way. Why see any fundamental connection between liberty and prosperity, liberty and well-being? And in particular, why any connection between prosperity and/or welfare and the strong general negative *right* to liberty that I have been at pains to define and distinguish from other ideas in the field?

Libertarianism is certainly not nihilistic, as I hope is clear enough from the foregoing; but it is *liberal*, and that means that its moral outlook is intended to hold independently of people's specific ends, their particular views about what is good. Liberalism is the view that government is for the sake *of the governed*, it is to promote *their* good as *they* see it, and not the good of somebody else or of some special class, or even of them as somebody else sees it. And thus there is no *one* purpose, no *one* sort of good that respect for others' liberty serves or is dependent on. But on the other hand, one need not hold to the thesis that liberty is an "intrinsic good"—a view that I am quite ready to characterize as "idolatry of liberty." Not only does one not *need* to hold such a view, but in fact it too is, perhaps surprisingly, *precluded* by the liberalism of which, in my view at least, Libertarianism is the most "extreme" form.

To be sure, it is not clear what meaning one would attach to the idea that liberty is an intrinsic good, anyway. But what matters is that even if it did mean something in one's own peculiar case, people in general would not obviously be motivated to so regard it. Why, after all, should individual A regard individual *B*'s liberty as a good "in itself"? It seems both empirically completely implausible, and conceptually unwarranted, that he should do so.

The "Why" of Liberty

But there is indeed the strongest reason for regarding one's *own* liberty as a good: not to be at liberty to do what one wants is not to be able to do those things. Others' forcible intervention against one's chosen courses of action is, necessarily, frustrating. If one regards the things one is after as good, as presumably we in general do (Aristotle: "Every art and every inquiry, and similarly every action and pursuit, is thought to aim at some good"),[35] then one surely thereby is motivated to be averse to frustrating conditions, which keep one from attaining those goods. But one does not, of course, have this same reason in regard to *others'* liberty; indeed, possibly just the reverse. Their being at liberty to do something might be just what I don't want. So why regard the liberty of others, as well as oneself,

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as a *right*? The answer I propose, and as it seems to me, the only sort of answer that can really do, is that we want our *own* liberty to have that status, and want it badly enough to be willing to recognize others' as of similar status, provided they reciprocate. Recognition of a general right of liberty has to be a good deal for all.[36]

But talk of "consequentialism," as it runs through Friedman's paper, is unhelpful. No individual can be assumed to value the general liberty just because it conduces to a general, collective good, even if it does. Any individual wants it, rather, because it is conducive to the various things that *he* values. Of course such liberty also enables one to surrender it in all sorts of ways. We can take on all sorts of commitments and bonds that are, in the cases in question, in our view better for us than remaining unencumbered in those particular respects. (One large advantage of its being our choice whether we shall do such things is that when we do choose, our hearts will be in it.) These observations sufficiently answer Friedman's assertion that "under negative libertarianism, individual freedom of action is good, but we don't know why."[37] Of course we do. What we do not know, because it is not even true, is that the freedom of action of people *in general* must be thought, by all the others, to be good. That's the snag.

Friedman criticizes Nozick's lack of foundations, which is certainly fair enough. I have done so myself.[38] But he has it that the attention devoted to *Anarchy, State and Utopia* was "devastating inasmuch as it asked *why* we should take for granted, as Nozick did, the equivalence of individual liberty and private property. No non-circular answer has been forthcoming."[39] Sorry: I at least think I have provided such a noncircular answer,[40] though it may of course prove to be the wrong one; and I in turn will complain for lack of effective rebuttal to date.[41] But Friedman's criticism of Rothbard is specific and detailed; it calls for a few comments.

Rothbard proclaims that goodness is what fulfills man's nature, and that natural law provides man with a "science of happiness." To this Friedman responds, "One hopes that an empirical, trans-historical, consequentialist analysis of the conditions of human happiness will follow. . . . But . . . no such investigation is in the offing." Instead we get a "theory of liberty," and the proposed science is "never again heard from once it has been used to establish the desirability of identifying *some* characteristic of human beings as their essence—*regardless*, as we saw above, of the consequences for their happiness produced by the resulting ethics. . . . Instead, he turns straightaway to the stereotypical device of the bourgeois social theorist, Crusoe economics, not to derive truths of the economics of capitalism—for which there might be warrant—but to establish the human *moral essence*."[42] But Crusoe economics will, of course, focus on our efforts to survive against nature.

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> We are to overlook the fact that had he [man] been abstracted from the struggle with nature, as we are, rather than from society and culture, Robinson might have had time for thoughts of mortality or morality or love and might have been preoccupied with religion or service or community. . . . But by putting Robinson on a desert island, Rothbard thinks he has arranged things so that "reason is man's instrument of knowledge and of his very survival," and so "discovers the natural fact of his mind's command over his body and its actions: that is, of his natural *ownership* over his self."[42]

And from there, via Lockean arguments, Rothbard derives private property.

Obviously, as I agree, this is no good as a proof, for as Friedman observes, the alleged naturalness simply doesn't imply the inviolability attributed to it by Libertarians. Yet Friedman goes on to talk not merely as though Rothbard (& Co.) have not *proved* that there is a connection between "unfettered private property and individual liberty or justice," but as though there *is* no such connection. It seems to me clear that there is such a connection, which I have tried to clarify elsewhere,[43] but I'll briefly try again here, after pointing out specifically what's wrong with the Rothbard approach.

The trouble with Rothbard (and, I think, Rand) is that his account is, in a word, highfalutin. Talk of "human essences" exemplifies this. How are we to pick out *some* of our features rather than others as "essential"? The problem with such talk is that it makes it sound as though essences were a sort of entity on their own hook or in their own right. But that's all wrong. F-ness may be interestingly said to be the "essence" of things of the type G only if we know for what purposes we are regarding G. From the point of view of the basketball coach, Jones's "essential" properties will doubtless include things like height and coordination; but these will be of little interest to the chairperson of a department of mathematics in search of a specialist in combinatorics.[44] Can we single out, or at least narrow down, any features of persons that are of special interest from the point of view of morals? Sure, we can. Morals is a schedule of directives, norms, intended to influence behavior. Only entities with facilities for appreciating directives and capable of altering their behavior in what they perceive to be the light of those directives are eligible. But then what? Since the beings in question are being called upon to respond to proposed norms, we need to have some idea of the general form, if any, under which we can expect them to do so.

Now, in one sense we don't have very much of an idea of this. The suggestion that rational beings are guided by self-interest is of some interest, but the trouble is that in any sense of "self-interest" narrow enough to be really interesting, the hypothesis is evidently false. On the other hand,

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the "hypothesis" that people are guided by their interests, whatever they may be (and *in* whatever objects they may be taken) is not just true but, one must suppose, pleonastic; but for that very reason, it is of no use for predicting behavior. People do whatever they want to do, but what *do* they want to do?

It is somewhat helpful to add a few rudimentary "drives": e.g., that people are likely to be interested in remaining alive, and thus of doing what conduces to that, such as eating from time to time, among various other things. But this won't get us a large, substantive uniformity of Human Nature. However, if we add the observation that when people relate to other people, the fact that those other people can and characteristically do respond or react to what the initiating people do is of quite a lot of interest, especially when paired with the aforementioned points about probable diversity. The interest gains when we also note that people's desires are such that, given their environments, there are likely to be scarcities, which are likely to engender competition. And they are of more interest yet when we add that typical humans are quite well equipped with the potential for making real trouble for any of their fellows. It is pretty hard to ignore both (1) that they are so *equipped*, e.g. with fairly hefty muscles and limbs, and quite dextrous fingers, all under the control of a pretty potent central information processor, and (2) that what they are equipped to inflict on those others is *trouble*, in the specific and extremely relevant sense of interfering substantially, e.g. fatally, with those others' pursuit of virtually anything they might be inclining to pursue. It is also true, and scarcely less important, that typical people are equipped in ways that could be quite helpful to almost any other people, in a sense of "help" that would be acknowledged by those others to be of real interest to them.

When these things are said to be "important," to "matter" to people, these are not value judgments on my part, directly, but rather observations on what matters or is important *to them* – that is, to all persons, to "us." We shall have to consider altering our proposed course of conduct in the light of how others react, if their reactions can influence the likelihood of success in those courses. Other people in that sense become the source of special problems (and opportunities) for us. When we contemplate people's potential to affect us for good or ill, we may find ourselves motivated to do something about it, in particular in the way of modifying previously adopted programs of behavior.

The question of philosophical moral theory, we may now say, is this: Can we formulate any plausible *general principles* for relating to others? "Plausible" has to mean here that there is some rational motivation for accepting them in practice, that is, for controlling one's own behavior in

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the light of them. "General" means not only ongoing, but reaching to a lot of people, indeed, we hope, to everybody. And the term "principles" has a quite specific meaning here: namely, of general behavior directives that may call for alteration of one's behavior even in the face of fairly strong desire for the contrary: we act "on principle" when we do not act simply or straightforwardly out of current interest.

Finding a non-question-begging and yet relevant answer to the philosophical question about morals is not easy. But it now seems clear that it must lie within the domain of what has come to be called public choice theory. When one's interests and one's ability to pursue them on one's own lead to conflict with others, things may go better if we don't just plunge into the conflict with force of arms or guile, but seek instead alternatives in which the other party would be motivated to agree on some compromise, leaving both us and those others better off. In short, as I have said above, we need a "social contract" foundation for morals, if morals is to be rational.

Of course people have suggested that morality is not rational, but this is usually a point about the character of certain particular actual or proposed moralities or moral theories, certain particular sets of directives, rather than about the very idea of self-constraining rules of behavior. The charge of irrationality may apply notably to some maxims that have a certain currency, at least at the level of preaching or of lip-service. To take an important instance, consider "Love thy neighbor as thyself!" For most real people, this is an impossible command, taken at all literally, and would be silly even if it were possible. But the fact that we can point to some that are silly—wouldn't it be astonishing if there were none?—hardly shows that there are none that aren't. "Do not kill innocent people, even when you can get away with it!" for instance, is a highly rational directive, when you think about it. There are people who don't, no doubt. But the case for supposing that they simply haven't done their homework about that is very strong.

The search for a "rational" morals is *not* motivated by some metaphysical idea that rationality is the Essence of Man, but rather by the point that we are in the arena of decision-making, of conscious alterations to behavior. That perhaps often the thing to do in life is simply to go with one's antecedent instincts is a perfectly feasible possibility, and one that, I should think, would often be the correct one; reflection often leads to the conclusion that we should just get on with it and stop worrying. And that one's interests are "fundamentally nonrational" would seem to be virtually self-evident, if by this one means that there aren't any further reasons for having them—that one just *does* have them, and that, at least until something else comes along, is that. Ultimate desires cannot be the *product* of

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reflection, by definition, though they may well be subject to some kind of control in the light of it. Nevertheless, one's interests, plus the aforementioned facts about people, motivate the adoption of principles. Principles constrain, indeed—they wouldn't be principles if they didn't; even so, the only point in having them is to do better in life.[45]

Liberty and Property

We turn now, then, to the Libertarian's pet fixations, liberty and property. Why talk about having a "property in the self," and why suppose that there is any connection between that and private property in the more usual sense?

The answer to the first is important, but remarkably straightforward. Property is what we can do as we please with—what *we* have authority over, rather than others. Liberty is being allowed to do what one wants. But doing what we want just *is* using ourselves, to do things: hands and legs, computational facilities (aka brains), and the rest of what goes into the bundle of connected capacities and biological organs that we call the "self." Calling for property in oneself simply is calling for being allowed to do as one pleases—i.e., as one pleases *with* oneself. And the point of being so allowed is that one might then be able to achieve the various objects of those various interests or desires, notably by being free to engage the similarly free energies of various of one's fellows.

What about property in external things, then? Here the answer is that lots of the things one might be interested in doing *involve* such things. Operating with bits of the world is what most acts consist in, and to do what we are interested in doing in that world we need, in a great range of familiar cases, to be able to rely on the availability of the means of doing them. If we suppose that our general interest in liberty can support the invoking of a right to it, then we can see how that right will also extend to property. There's nothing particularly mysterious about it, and certainly nothing that calls for extended "metaphysical" disquisitions on the nature of the soul.

Private property is, then, literally a domain of individual freedom. More precisely, each bit of property is a domain of freedom, exactly akin to civil rights. The latter are aimed at protecting various activities not essentially involving the use of material bits of the world, while the former protect activities that do essentially involve them. But nothing really hangs on such a distinction, which indeed is a large part of my point here. (Thus to specifically exempt property from the scope of a liberty principle, as Rawls notoriously does, ought to be defended with specific arguments—but in Rawls's case isn't.)[46] In both cases the general recipe is also the same:

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people's activities are to be restricted to those that don't utilize the other person or his (other) previously acquired property (a.k.a. his previously undertaken lines of activity) in ways contrary to the consent or, if independently known, the interests of the person in question.

To suppose that interest in one's own liberty of action is some kind of weird fetish, or "idolatry," betrays lack of appreciation of what is at stake. But the same does not go for the moral proposal to declare liberty to be *everyone's* right, and moreover everyone's *sole* right. In so doing, we raise the question whether the libertarian has gone overboard, somehow. This is a challenge, but it is one for both parties. Nonlibertarians have to show us *why* we should accept anything more. Libertarians have little trouble showing why we should accept that much. The appeal of a right to liberty is simply the appeal of being able to live *your* life, especially if, as is typical, it happens to be a different life from the one others propose to live. Liberty hooks together only those who want to be hooked. That's the benefit. The cost is that it requires one to forego opportunities to hook others who don't want to be hooked. The question is whether the result of a general liberty principle is a positive balance for all rational people.

"Consequentialism"

Against libertarianism, thinks Friedman and many others, stands a moral outlook that he refers to as "consequentialism." What are we to say about it? It is, to begin with, really quite unclear what Friedman has in mind by this term. Consider the principle that we ought to keep our agreements. Is this "non-consequentialist"? Are we bound to "keep agreements" though the heavens fall? But who would *agree* to having the heavens fall? Any agreement has inherent limits. I shall return your book tomorrow, yes: but not if there is an earthquake in the meantime. Am I bound to refrain from killing innocent people no matter what? What if the innocent person in question is mounted on the front of the armed vehicle whose guns you are aiming at me?[47] And then, why should we make agreements anyway, if not that we shall both then benefit from their terms, if they are adhered to? The idea that promise-keeping is a sort of aesthetic passion, comparable to, say, chess or collecting jades, is really too absurd to bear serious consideration. If that were what Friedman meant by "deontology," then of course we must all go for consequentialism.

I have elsewhere[48] argued (and, I think, established) that the claim to draw a *general* and precise line between "acts" and "consequences" is bogus. If A kills B, is B's death a *consequence* of A's act of killing? Or is it "part of the very act itself"? If the former, what's wrong with murder is, obviously, "consequential"; if the latter, then it is, equally obviously, not. Yet both

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fact and reason are *the same*. Any idea that the "deontological" duties are so in total independence of anything that can reasonably be called "consequences" is simply incapable of coherent articulation.

So the question cannot be, "Consequences or not?" It has to be, "*Which* consequences, and how are they to be taken into account?" Each person, we may provisionally assume, is concerned about various eventualities that may happen to himself, and usually also to some others, such as friends and loved ones. We may also provisionally assume that he doesn't *especially* care about what happens to others outside that circle. These are rebuttable presumptions, and often false: many people do care considerably about a much wider circle of persons, though most, I suppose, do not. Now, what people care about identifies, *for them*, which consequences are relevant. And the point is, they *differ*. The fact that under a given policy certain people would be in certain ways negatively affected cannot be assumed to matter to others.

More generally, and most importantly, we cannot assume that everyone matters equally to everyone—especially since that is obviously false. So we cannot simply assume that public policy is, just automatically, to be assessed in terms of consequences to people in general, no matter who. To assess fundamental proposals about government and the like in terms of effects on the "public welfare" is not just obviously on; it *needs motivating*.

It also needs clarifying. Welfare is a condition or set of conditions; but just which condition or conditions is a matter of fairly enormous disagreement, in fact, and that is where the difficulties begin, for two advocates of welfare may well be advocating different and incompatible things. However, what is especially important for present purposes is the conception of "public" or "general" welfare. Whatever that is, it must be in some sense the aggregate or sum of the welfares of the members of that public. And that's the trouble, for no matter how you analyze it, *your* welfare may be quite differently involved from that of many others. An increase in the general welfare, then, may or may not be an increase in yours or of those you care about, and vice versa. When the well-being you are concerned about is not a positive function of that of the *general* welfare, however reckoned, then the question of why you should be interested in promoting that general welfare becomes critical.

One way of trying to motivate it would be to point out to the individual in question that he or she is a "*part*" of that public, and therefore what happens to it affects him. The trouble is, the argument is fallacious. He is a part of it, indeed; but what happens to "it" does not necessarily affect him at all; and where it does not, his support of policies that cost him something, however much they may be designed to improve things for *other* parts of the public, cannot be counted on. He requires an argument: either

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one showing that it will, too, affect him in a sufficiently material way that his support would be prudent; or else that he ought to care about these people, even though he currently doesn't. But how to do the latter? And, more important, if we fail—as, in all realism, we often will—where do we go from there?

So there is nothing wrong with Friedman's proposal to demonstrate that "there is something about all forms of intervention in civil society that frustrates, rather than serves, the *well-being*—as opposed to the moralization, or even the equality or the liberty—of all."[49] The question is, how does he understand this? In rejecting the moralism he supposes he is denying, for instance, where does he put an argument offered by a thief to the effect that the increment in welfare to himself that is the result of his thievery *outweighs* the decrement to the welfare of his victim, thus promoting the greater good on the whole? And how, by the way, can anyone talk about "intervention" *at all* without the notion of private property—which Friedman professes to find utterly unjustified by libertarians?

Friedman speaks of "moralizing," suggesting that the radical libertarian places "as much or more importance on moralizing people as on the reason to do so, namely, to improve their lot."[50] But the motive of moralizing is not to improve the lot *of the person moralized*, just like that. Friedman previously (and rightly) rejected the idea that "*benevolence is all that matters*," an assumption he plausibly attributes to those who "turn to the state to solve problems."[51] In trying to get people to do what is right, we can be trying to improve our *own* lot. But to do it by moral methods is to commit oneself to producing an argument which will show the addressee that his lot will indeed be likewise improved, or at least not retarded, by accepting the proposed principle. In that sense, morals is indeed hitched to welfare or well-being, in the view of us contractarian types. But it is *un*hitched from the utilitarian version of "consequentialism," which requires cardinal interpersonal maximization.

Utilitarianism

What is usually called "consequentialism," in short, is the view that certain effects on other people, effects welcome or unwelcome to them, "count" for us whether we are interested in them or not. In the most clearly worked-out version of this general view, namely classical utilitarianism, the idea is that the good of any person is to count equally with one's own, and to be measured by a common metric so that we can meaningfully say that a certain *degree* or *amount* of good for anyone is to count equally with a similar amount for anyone else. But count *to whom*? And *why*? To the first, the utilitarian must say that somehow they are to count *to everyone*: each of

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us is to utilize this measure in our conduct. Thus each of us, somehow, in principle, is to account it just as good a reason for doing x that x would produce n units of good for Jones or Semyonovich or Mohammed as that it would produce n units for ourselves.[52]

That is a stupefyingly implausible condition. So the question, "Why?" is not going to be easy to answer, to put it mildly. Indeed, it seems to me utterly clear that it is impossible to answer. Nothing but semantic chicanery could lead anyone to accept the utilitarian principle, as so stated. And if that is so, then it's game over for utilitarianism.[53]

Once we see that, then flourishing slogans about welfare is an activity which we should view with several grains of salt. Consequences do count, of course. To each of us, all sorts of possible outcomes of our and others' actions matter, and matter a lot. But if an outcome doesn't matter *to you*, then *you* won't be motivated to pursue it, though you might for awhile be tricked into doing so. In the absence of trickery, though, we had better turn to an understanding of social norms that is not founded on dubious assumptions about the "value" of the general welfare. The only reason why any given individual can be presumed to care about the general welfare is that he or she is likely to share in it. And that is iffy. So policies that are advocated on the ground that they promote welfare do not necessarily have any rational force from the start.

Most advocates of welfarism would agree that *some* methods of promoting welfare are not acceptable. If we can improve the total sum of utility by killing off a few Jews, say, then most seem to agree that that's a no-no. Many would want to impose some sort of "fairness" constraints: the taxes we impose in order to "improve welfare" must fall more or less equally upon all (except, of course, the poor themselves). But there is a more basic question that has be asked first. If it's not O.K. for us to improve the general welfare by killing off selected people, and not O.K. for private individuals to promote it by stealing, why *is* it O.K. for "the public" to improve it by taking involuntarily from everyone? Why isn't government just wholesale theft, Robin Hood-variant? (In fact, the comparison is misleading, for Robin Hood, according to legend, did not just steal from "the rich," but rather from people who had enriched themselves by forcibly imposed taxation. His was billed as an activity of compensatory, and in some cases retributive, justice. Robin Hood might have been a Libertarian!)

To the response, "Well, they [the 'poor,' say] count just as much as you, and they need it more," the correct answer is: Speak for yourself! Human sympathy is indeed possible, and generally to be applauded. But sympathy that takes the form of extracting involuntary support from others is quite another matter. Why applaud *that*? Why, indeed, even call it "sympathy"?

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That the poor themselves might be inclined to applaud it is, no doubt, unsurprising (though in fact, many do not—even in 1992). That the victims should, however, is quite a bit too much to ask.

It is at this point that we may join Friedman in debunking moralism—only now it is the moralism that elevates poverty to the status of superior virtue, and confuses sympathy and charity with justice. Contemporary American ethical philosophers, by and large, seem determined to eschew any sort of foundations for their beliefs; apart from some effort to make sure that they all hang together, firmly repeating them seems to be the prescribed form of "argument." Those who find this less than satisfactory—inevitably, those whose views differ more or less from the prevailing orthodoxies of the day, of which democratic welfare statism is the quintessential element—will ask for reasons going beneath the surface of mere assertion. There is nowhere else to go but the interests of the persons concerned. But these interests each belong to individual persons, and until that basic point is clearly appreciated and given a satisfactory theoretical accounting, recourse to an undifferentiated "consequentialism" will do no good. More to the point, it will do plenty of harm.

Let us be clear about one thing. To look for better principles in this area is, certainly, to look for formative elements of the good society, the public good. No set of principles can sensibly be advocated as true even though they are plainly likely to lead to social ruin. There is no contrast between "consequential" and "deontological" at this level. If something is wrong with government intervention into this or that set of individual transactions, it is *of course* that the society in which this occurs is somehow a worse society. But society is just all of us, and each one of us has a complaint if parts of our lives are worsened without compensation, just as those with whom we interact have a similar complaint if the net effect of our interaction is a similar uncompensated incursion on them.

This is simply the liberal vision of the good society: people living good lives by their own lights, rather than being involuntarily subordinated to the wishes of alien others. Concerns with liberty and property, to the point of insisting on rights to same, are simply concerns for the conditions of such unalienated good lives. Whatever may once have been supposed, the basis for such rights is efficiency, pure and simple. Moral principles are solutions, or efforts at solutions, to public-goods problems. Absent property rights, externalities assure that individuals simply aren't able to do a lot of the things they would like to do, and in consequence production of goods and services that other people might like is drastically curtailed or rendered impossible. In the absence of liberty, life itself is essentially impossible, and in the absence of rights to it, liberty is, again, unlikely to be extensive—which are further and drastic inefficiencies. John Stuart

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Mill's defense of individuality may be seen as an application of this same analysis to the seemingly remote case of personal peculiarities and pursuits: absent rights to those, creativity is virtually extinguished, and progress for all rendered all but impossible.

It is not clear what it is to defend private property "for its own sake"; here again the enormous misleadingness of the distinction of "consequences" from "forms" is apparent. To own is to have recognized authority or control over what is owned; but why do that? The answer is, for any number of reasons; and if some people get off on owning things, that is a curiosity, not the essence of the institution. For everyone else, one owns because one does better thereby, and when one ceases to do so, one sells—the right to do which is, of course, one of the most potent advantages of the institution, in the absence of which potential gains from trade are simply zapped. Is this a "consequentialist" defense? Fine: but notice that the sort of consequences pointed to are not happenstance, but essential to the institution itself. So if by "for its own sake," you mean on the basis of its intrinsic characteristics, then yes: the right to private property may be defended "as an end in itself." (How much, if any, of economic theory isn't virtually pure logic?)

The foregoing, which are by no means adequate to Friedman's eloquent work, do not greatly dissent from it in policy respects. We should indeed be pursuing all the lines of critique and inquiry he says, and largely for the reasons he says. Only those reasons, so far as I can see, continue to exemplify and confirm the libertarian hypothesis, rather than some hybrid or "neo" version of it, or something else altogether. No doubt my confidence in this is as much due to the perception that the implications of that hypothesis are considerably different from what many people have, on insufficient reflection, supposed as it is due to genuine ideological divergence. Still, bad practice is driven to a depressing extent by bad theory—where would socialism in this century have been without Marx? It is far from useless to look at the foundational aspects of political thought and action, and I hope that this lengthy response to an important set of criticisms will contribute usefully to the ongoing discussion.

NOTES

1. Jeffrey Friedman, "The New Consensus: I. The Fukuyama Thesis," CRITICAL REVIEW 3, nos. 3–4 (Fall 1989): 373–410; "The New Consensus: II. The Democratic Welfare State," CRITICAL REVIEW 4, no. 4 (Fall 1990): 633–708; "Postmodernism vs. Postlibertarianism," CRITICAL REVIEW 5, no. 2 (Spring 1991): 145–58.
2. Friedman, "Postmodernism vs. Postlibertarianism," 147.

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3. Friedman, "The Democratic Welfare State," 635.
4. J. S. Mill, *On Liberty,* ch. 1 (London: J. M. Dent & Sons, 1926; Everyman edition of *Utilitarianism, Liberty, and Representative Government*), 75.
5. Keeping our vocabulary antiseptically neat regarding the distinction of fact and value is perhaps impossible, and certainly expositorily inefficient. That people "have" rights or authority are usually normative claims couched, misleadingly, in descriptive language.
6. Hobbes, *Leviathan,* ch. 15: "Right, consisteth in liberty to do or forbeare; whereas Law, determineth, and bindeth to one of them: so that Law, and Right, differ as much, as Obligation, and Liberty: which in one and the same matter are inconsistent."
7. See, for an especially clear presentation, Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 166.
8. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), esp. 153–5.
9. Isaiah Berlin, "Two Concepts of Liberty," in Robert M. Stewart, ed., *Readings in Social and Political Philosophy* (New York: Oxford University Press, 1986). It and further papers are found in Berlin's *Four Essays on Liberty* (Oxford: Oxford University Press, 1969).
10. Stewart, 96.
11. The classic source here is Gerald MacCallum's "Negative and Positive Freedom," *Philosophical Review* 76 (1967): 312–34.
12. Charles Murray, *Losing Ground* (New York: Basic Books, 1984).
13. A very large issue bearing on this distinction has been under discussion in philosophical circles for decades, under the rubric "killing vs. letting-die." The collection by Bonnie Steinbock, ed., *Killing and Letting Die* (Englewood Cliffs, N.J.: Prentice-Hall, 1980) has some seminal discussions including the classic one by James Rachels, "Active and Passive Euthanasia." The claim that we cannot distinguish the two is almost always obviously false; the claim that they are *morally equivalent* is another matter. Another important collection, *Tulane Studies in Philosophy*, vol. 33, *Positive and Negative Duties*, ed. Eric Mack (New Orleans: Tulane University, 1985) has several interesting contributions.
14. Friedman, "The Democratic Welfare State," 639.
15. Legal theorists, especially, talk of a "liberty right" as being a type of action which is neither required, forbidden, nor protected. But while this makes some sense in law—there could be no law either requiring or forbidding a given action, and also no law saying anything about people who interfere with other people trying to do the action—it makes, I believe, no sense whatever in morals; or rather, it would be the situation of Hobbes's celebrated perfectly amoral state of nature, in which nothing at all is either right or wrong.
16. Friedman, "The Democratic Welfare State," 639.
17. "It is a part of the notion of Duty in every one of its forms, that a person

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may rightfully be compelled to fulfill it. Duty is a thing which may be *exacted* from a person, as one exacts a debt." J. S. Mill, *Utilitarianism*, ch. 5, "On the connection between Justice and Utility" (London: J. M. Dent & Sons, Everyman edition of *Utilitarianism, Liberty, and Representative Government*, 1926), 45. Note that the quoted sentences are not on the subject designated by the chapter's title. Whether the grounds of rightful compulsion have to do with general utility or not is logically a separate subject.

18. The parenthesis is to ward off confusion with still another sort of philosophical view that is so called, namely the theory that the human will is (at least in favored cases) free of any constraining causes. Friedman's "positive libertarianism," in fact, has some affinities with that.
19. Immanuel Kant, *Foundations of the Metaphysics of Morals* (Indianapolis: Bobbs-Merrill Library of Liberal Arts, 1959), 13–14 are the classic passages.
20. Friedman, "The Democratic Welfare State," 640.
21. Ibid.
22. Ibid., 640–41.
23. Ibid., 642.
24. Ibid., 641.
25. I spell out my complaints more fully in Jan Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1989), ch. 10, 110–21.
26. Friedman, "The Democratic Welfare State," 642.
27. Ibid.
28. Ibid.
29. Ibid., 645.
30. The classic source is from W. D. Ross, *The Right and the Good* (Oxford: Clarendon, 1930). See specifically pp. 19–20. Ross develops this distinction in the context of an intuitionist theory of the foundations of morality, but the distinction itself in no way depends on that theory.
31. Friedman, "The Democratic Welfare State."
32. Ibid., 654.
33. Ibid., 655.
34. Ibid., 662.
35. The opening sentence of *Nicomachean Ethics.*
36. Alan Gewirth is famous for an argument along this line which, however, purports to be *non*-contractual. See his book, *Reason and Morality.* I have criticized his argument, which fails if it is not contractual, in my critical notice of that book, "Alan Gewirth's *Reason and Morality*—A Study in the Hazards of Universalizability in Ethics," *Dialogue* 19, no. 4 (December 1980): 651–74.
37. Friedman, "The Democratic Welfare State," 655.
38. Ibid., 664.
39. See my Critical Notice of Robert Nozick, *Anarchy, State and Utopia, Dialogue* (1977): 298–328, esp. 302–5. A considerable part of my motivation in writing *The Libertarian Idea* was precisely to rectify this unfoundedness.

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40. Narveson, *The Libertarian Idea,* esp. pt. I.
41. Readers of this journal may be familiar with the review by Don Herzog, "Gimme That Old-Time Religion," CRITICAL REVIEW 4, nos. 1–2 (Winter-Spring 1990): 74–85. I reply to Herzog in CRITICAL REVIEW 5, no. 4 (Fall 1991): 573–82. Herzog's title suggests, what in my opinion is amply borne out by his text, that he missed the point.
42. Friedman, "The Democratic Welfare State," 665.
43. Narveson, *The Libertarian Idea*, chs. 6–8.
44. Put delightfully by Quine: "But what of an individual who counts among his eccentricities both mathematics and cycling? Is this concrete individual necessarily rational and contingently two-legged or vice versa?" W.V.O. Quine, *Word and Object* (N.Y.: Wiley & Sons, 1960), 199.
45. I owe much of my view about morality and moral theory to David Gauthier, *Morals by Agreement*. See especially chs. 1 and 6, which expound what many have regarded as the most controversial part of the theory. For my own further comments on that part, see *The Libertarian Idea*, 140–44.
46. Jan Narveson, "A Puzzle About Economic Justice in Rawls' Theory," *Social Theory and Practice* 4, no. 1 (Fall 1976): 1–28.
47. The example is suggested by Nozick, 35.
48. Jan Narveson, "Formalism and Utilitarianism," *Australasian Journal of Philosophy* (May 1965): 58–71.
49. Friedman, "The Democratic Welfare State," 668.
50. Ibid., 685.
51. Ibid., 684.
52. Two modern treatises on the subject may be of interest: Jan Narveson, *Morality and Utility* (Baltimore: Johns Hopkins University Press, 1967), and more recently Russell Hardin, *Morality Within the Limits of Reason* (Chicago: University of Chicago Press, 1990).
53. These are the confessions of an ex-utilitarian. See my earlier work, *Morality and Utility*, which attempts to motivate just this principle, and to do so along the same lines as those of Sidgwick and Mill before me. But I was convinced (by David Gauthier, in fact) that the argument simply couldn't and didn't work.

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Antony Flew

DISSENT FROM "THE NEW CONSENSUS": REPLY TO FRIEDMAN

This is a rejoinder to some of the contentions of Part II of Jeffrey Friedman's monster article (or mini-book?) about "The New Consensus." After questioning his supposedly "non-tendentious understanding of Marx," it proceeds to deny that what Friedman calls Positive Libertarianism is any more a sort of libertarianism than imaginary or non-existent cows are a kind of cows; and to insist that what Friedman calls morality is light years removed from the dutiful, domestic decencies of what would normally be considered moral conduct. Next it examines Friedman's misunderstandings of option rights, which actually presuppose only the weakest possible claims to equality. Finally it concludes with criticism of his bizarre and perverse assumption that concern about the consequences of our actions has little or nothing rather than almost everything to do with their morality.

In the Fall 1990 issue of CRITICAL REVIEW the abstract of the second part of Jeffrey Friedman's article on "The New Consensus" begins: "The goal of the left has been predominantly libertarian: the realization of equal individual freedom." He goes on in the prepenultimate and penultimate sentences of that abstract to promise: "Before reviewing the libertarian

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Antony Flew, 26 Alexandra Road, Reading RG1 5PD, England, telephone (0734) 261848, is the author of, *inter alia*, *The Politics of Procrustes: Contradictions of Enforced Equality* (1981), *Equality in Liberty and Justice* (1989), and *Thinking about Social Thinking* (rev. ed. 1992).

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motives behind both socialism and interventionism, criticisms of moralistic neoliberal 'libertarianism' are offered. These are intended to clear the way for a consequentialist critique of the interventionist welfare state"; a critique which, as Friedman explains earlier, "would integrate the many consequentialist arguments against it."

The very first sentence of that abstract took my breath away. For in it at the beginning, as so often later, Friedman makes, as if it was altogether uncontroversial and unproblematic, a statement which strikes me as quite obviously false.[1] Readers sympathetically striving to understand are therefore bound to speculate that key terms may be being employed in ways other than those which come naturally to those readers themselves. Confirmation of this speculative hypothesis, as applied to the present case, is supplied almost immediately. For we find that, after speaking of the (unqualified) "libertarian motives behind both socialism and interventionism," Friedman proceeds to surround with sneer quotes the key word within the expression "moralistic neoliberal 'libertarianism,'" where it is being employed in its usual understanding.

Then again, even from the three sentences already quoted from the abstract, it appears that Friedman is proposing to employ the adjective "consequentialist" as the excluding opposite of "moral" or "moralistic" rather than—standardly—of "deontological." (Friedman indeed shows no sign of being acquainted with the latter term.)

This abusage of a second key word, like the initial sneering refusal to allow that those customarily describing themselves or being so described really are libertarian, is as gross as it is crucial and fundamental to Friedman's argument. For, save in what will at most be those very few cases in which acting morally is a matter of simply performing without question duties which, though the heavens fall, ought nevertheless to be done, considerations of the likely or certain consequences of possible alternative courses of conduct must always be relevant to questions about what is the morally right thing to do.

One main consequence of Friedman's systematic Humpty Dumptyism[2] is that any response to the challenge of "The New Consensus" is bound to be somewhat scrappy and spasmodic, as the critic struggles to come to grips with the text whenever and wherever it seems he best can.

"A Non-Tendentious Understanding of Marx"?

Friedman is so confident of the truth of many assertions which to me appear manifestly false that he refrains from providing any supporting evidence.[3] Thus he simply tells us, without thinking either to quote or to refer to any passages in the works of Marx, that "a non-tendentious

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understanding of Marxism must acknowledge that, like less radical forms of leftist thought, it takes more seriously than any conservative or classical liberal defense of private property the individualistic, egalitarian inheritance of the Enlightenment and of Western culture in general. The upshot is that it is the ideological left, not the neoliberal right, that truly represents the libertarian moral aspirations of the West. (The term 'neoliberal' is used throughout to designate free-market thought . . .)".[4]

We are also told, again without reference to any confession of that alleged goal or any proclamation of that supposedly triumphant ideal: both that "Marx's *goal* . . . was the achievement of a freely willed moral order, not a rationalistically planned social structure" and that "it was not the defeat of existing Communism in 1989, but rather the ascension of communism as a theory in the nineteenth century, which confirmed the triumph of the libertarian ideal."[5] Similarly we are warned that "when we picture Marx in the library of the British Museum, we should remember that he was researching the question of how to attain the goal of allowing people in modern society to *be* good—which he assumed was equivalent to the question of how they could most effectively *do* good."

It is no doubt fortunate that these direct insights into the mind and heart of Marx have been vouchsafed to Friedman. For otherwise those dependent upon external evidence might be grievously misled. We are, for instance, told by such mere observers that "whenever anyone started to talk to Marx about morality, he would roar with laughter."[7] Other close students of the published works agree with Lenin that Marxism contains "not a grain of ethics from beginning to end" since "theoretically it subordinates the 'ethical standpoint to the principle of causality': in . . . practice it reduces to the class struggle."[8]

Again, the prime document for "communism as a theory in the nineteenth century" is, surely, the *Communist Manifesto*? Yet in that there is only a single sentence which can be construed as an expression of "the libertarian ideal." It comes at the very end of Section 2, "Proletarians and Communists," and reads: "In place of the old bourgeois society, with its classes and class antagonisms, we shall have an association in which the free development of each is the condition for the free development of all."[9]

Since for any set anyone might choose to specify, "the free development of each" is a logically necessary condition "for the free development of all," that subordinate clause has, in order to constitute more than a nugatory tautology, to be construed as contending that, in the absence of "classes and class antagonisms," as conceived by Marx and Engels, it would be impossible, as a matter of fact rather than of logic, for anyone to develop freely unless all did. The awkward qualification "as conceived by Marx and Engels" has to go in. Without it the whole contention could again be

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reduced to tautology by simply describing all conflicts of interest as conflicts between the various classes (sets) constituted by those whose interests conflicted.

If, however, that qualification is duly entered and properly stressed, then the contention expressed by this crucial sentence certainly becomes substantial. But it becomes substantial only at the cost of becoming paradigmatically utopian—precisely what "scientific socialism" was supposed not to be. For what could be more utopian than to foretell the coming of a society which, just because it would not be subject to one particular kind of conflict, however important, would be altogether conflict-free?

Even if we were to allow that this solitary sentence from the *Communist Manifesto* constituted sufficient proof that the dominant ideal[10] of "communism as a theory in the nineteenth century" was libertarian, we should still need to enquire about Marx himself. There are two questions here, only one of which is immediately relevant. The first and less directly relevant is how far Marx was sincere in the pursuit of social scientific truth, and therefore concerned about the verification or falsification of predictions involved in or derived from what in correspondence with Engels they both described as "our view" or "our theory." The second and more immediately relevant is whether, regardless of what may or may not be true of Marxism as a theory or a movement in the nineteenth century, Marx himself was sincerely and consistently dedicated to the realization of a libertarian ideal.

Certainly there is no question but that Marx was wholeheartedly dedicated to promoting proletarian revolution. But was such revolution for him a mere means to the production of "an association in which the free development of each" will be "the condition of the free development of all"? To discover the answer to this question we have to remind ourselves that anyone with any pretensions to rationality, pursuing one objective merely as a means of securing another, must be prepared anxiously to examine whatever good reasons may be offered for fearing that the former will not after all yield the latter. Then, if these reasons are compulsive, such a person will abandon the pursuit of that initial objective—the more eagerly if it happens to seem as if it would eventually produce the very opposite of the end actually desired!

On both counts the most damaging evidence against Marx is his consistent and persistent failure to make any effective attempts to answer those critics who argued that the enforcement of full socialism, Marxist-style, would inevitably result, as in fact it has, in a vastly intensified and more universally repressive form of oriental despotism; or of, as it is euphemistically labelled in that tradition, "the Asiatic mode of production." That Marx abruptly abandoned his studies of such phenomena would appear to

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be doubly significant: first, because they could not be encompassed within, and therefore constituted a falsification of Marxism; and, second, because some of these "Asian" societies provided the best available evidence of the likely political and social effects of establishing a totally centralized command economy.[11]

In his revealing study of *The Red Prussian: The Life and Legend of Karl Marx*,[12] Leopold Schwarzschild notes that criticism on these lines began very early, even before the first publication of the *Communist Manifesto*. Already in 1844 Arnold Ruge, who was "still a democratic, not a socialist, revolutionary," was protesting that the realization of the dreams of Marx would be "a police and slave state."[13] Again, in the year of the *Manifesto*, when Engels explained its ideas to the vice president of Louis Blanc's party, that luminary responded: "You are leaning towards despotism."[14]

The fullest critique of this kind published during the lifetime of Marx was Bakunin's *Statehood and Anarchy*.[15] In 1874 and 1875 Marx did at least copy out some choice passages, adding his own rejoinders. But the fact that he never made any attempt to publish these rejoinders suggested that, whether or not he himself recognized their inadequacy, he was not much disturbed: either by the apparent falsification of a major prediction of "our theory"; or by the implications of this falsification for the attainment by means of proletarian revolution of his alleged libertarian ideal.

Quoting the *Manifesto* directive that "the proletariat will centralize the instruments of production in the hands of the state, that is, the proletariat raised to the position of a ruling class," Bakunin argued that this would in fact amount to "the despotism of the *ruling minority*." Hence, "the result is that the vast majority of the people is governed by a privileged minority . . . it may perhaps consist of former workmen, but as soon as they become representatives of rulers of the people they *cease to be workmen* and view all ordinary workers from the eminence of state; they will then no longer represent the people, but only themselves and their pretensions to govern the people."

The present section can perhaps best be concluded by quoting a remarkable passage from the letter which Marx wrote to Engels on 15 August 1857. This passage is noteworthy not only as an expression of an obscurantist, unscientific attitude to falsification but also for revealing something of what Marx had in mind when he spoke of dialectics or the dialectic method:[16]

> I took the risk of prognosticating in this way, as I was compelled to substitute for you as correspondent at the *Tribune*. . . . It is possible I may be discredited. But in that case it will still be possible to pull through with the help of a bit of dialectics. It goes without saying that I phrased my forecasts in such a way that I would prove to be right also in the opposite case.

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Libertarianism?

At the beginning of his section on "Libertarianism" (without the question mark!) Friedman tells us that, "like Rousseau and Kant, Marx sought to create a society that combined negative liberty, the freedom to do whatever one wants, with positive liberty, the freedom to do what is right." Positive liberty is explained to be "freedom from constraints against doing what it is right to do, while negative freedom is freedom from constraints against doing whatever one wants to do."[17] Desiring to distinguish positive from negative liberty in this particular way, with a heavy emphasis upon wanting, Friedman in this definition of "negative liberty" fails to allow for the fact that people who enjoy any freedom at all usually are at liberty to do things which they do not now want and probably never will want actually to do. A further fault of Friedman's definition is that it suggests that those of us who are devoted to (*merely* negative?) liberty are urging that everyone ought to be free to do whatever they want, regardless of the rights of others; which is, of course, not true.

Once these deficiencies in the definition of what Friedman thus puts down as (merely?) negative liberty have been corrected its devotees are bound to wonder what, if any, liberties are added by the addition of Friedman's positive liberty. For, wherever and in so far as individuals are at liberty to choose between two or more possible courses of action, one of which is "what it is right to do," they must necessarily already be enjoying "freedom from constraints against doing what it is right to do."

Libertarians of the old school are, therefore, scarcely likely to be either surprised or reassured when, under the subheading "Positive Libertarianism," and after insisting that he is NOT about "to engage in some kind of Orwellian doublespeak," Friedman proceeds to make both the most astonishing and the most fundamental of those claims which strike me as flagrantly false but which he makes as if they were altogether uncontroversial and unproblematic: "To refer to positive liberty is to recognize the fact that we would not do what is wrong unless we are compelled to—whether by uncontrollable desires or by a failure to perceive what is right."[18]

I have here to confess—albeit, as my sometime supervisor Gilbert Ryle loved to say, not very shamefacedly—to being old-fashioned. For in my childhood, which was before the Japanese attacked Pearl Harbor, all properly brought up children, as soon as they began to be taught the difference between right and wrong, learnt that what one ought to do is all too often what one does not at all want to do. That is one element in the teaching of my parents and pastors which I have never found the slightest reason to

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doubt. So the question arises whether some unusual meaning is here being given to one or both of the key terms.

Probably the answer is, "Yes, to both." For, although no illustrative examples of what he would conceive to be moral or immoral behavior are provided, it seems unlikely that Friedman has in mind such homely fundamentals as not stealing, speaking the truth, fulfilling promises made, seeing to the support and upbringing of children, and so on. Indeed were that what was at stake there would be little point in introducing a notion of positive freedom. So perhaps right action here is to be understood as more the sort of action to which Trotsky was referring when he confessed to the Thirteenth Congress: "I know that it is impossible to be right against the party. It is possible to be right only with the party, for history has created no other road for the realization of what is right."

But the more certain case is that of wanting or willing. For Friedman laments that "at 'the end of history' *we are saddled irrevocably*, it would seem, with negative liberty. . . . We are free to do what we want, but not necessarily free to do what we necessarily want: the good."[19] This will which necessarily wills the good can only be not any actual will but some philosophically imputed "real will." At which point anyone who happens to remember John Wisdom is bound to quote a favorite saying: "Whenever a philosopher asserts that this is *really* that, what he really means is that it is not; not really."

Those who know their Aristotle, as Hegel surely did, will hark back beyond Kant and Rousseau to the opening sentence of the *Nicomachean Ethics*: "Every art and every investigation, and likewise every practical pursuit or undertaking, seems to aim at some good: hence it has been well said that the good is that at which all things aim."[20] Aristotle, however, was not mistaking this to constitute a valid immediate inference. For he went on at once to observe "a certain variety . . . among the ends," and to argue that "if among the ends at which our actions aim there is one which we will for its own sake while we will the others only for the sake of this . . . this one ultimate end must be the good, and indeed the supreme good."[21] This must be "the object of the most authoritative of sciences"; which is "manifestly the science of politics."[22]

Although Aristotle maintains that "even if it be the case that the good is the same for the individual and for the state, nevertheless the good of the state is manifestly a greater and more perfect good, both to attain and to preserve,"[23] he is certainly not committed to the contention that individual human beings necessarily want, as the supreme good for themselves, whatever is the supreme good of the collectives of which they are members. That contention could only begin to become plausible on the assumption that members of our species, like the ants and the bees and the

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other social insects, are naturally adapted to life in a conflict-free society. That assumption, or some other very similar, was presumably made by Friedman's Marx. If it was also made by the historic Marx, then his reading of *The Origin of Species* should have taught him the error of his ways. But Marx sought always confirmation, and was blind to anything which might constitute a difficulty for "our view."[24]

Thus on 19 December 1860 he wrote to Engels: "I have read all sorts of things. Among others Darwin's book on Natural Selection. Although it is developed in the crude English style,[25] this is the book which contains the basis in natural history for our view." In another letter to Engels, on 18 June 1862, Marx wrote: "It is remarkable how Darwin recognizes among beasts and plants his English society with its division of labour, competition, opening up of new markets, 'inventions,' and the Malthusian 'struggle for existence.'" However, having so remarked, Marx made nothing of it. It appears not to have occurred to him that it is only on an assumption of the natural goodness of human beings, an assumption that we are so to speak preveniently adapted to become members of a conflict-free collective, that the promised triumph of the class to end all classes can be expected to result, and in pretty short order too, in the emergence of "an association in which the free development of each is the condition of the free development of all." And that, surely, is an assumption which has no "basis in natural history" and which is contradicted rather than confirmed by Darwin's "theory of evolution by natural selection."

The whole of the present second section has been an attempt to elucidate and examine Friedman's assertion that "to refer to positive liberty . . . is to recognize the fact that we would not do what is wrong unless we were compelled to—whether by uncontrollable desires or by a failure to perceive what is right." That assertion, it will be remembered, was prefaced by the assurance that Friedman was NOT about "to engage in some kind of Orwellian doublespeak."[26]

But that, surely, is exactly what he was embarking upon? For whatever can be the point of insisting upon the factuality of a proposition which everyone who, in any traditional understanding, knows the difference between right and wrong knows to be false, if it is not to open the way to the eventual justification of compulsion in the name of true, positive freedom? Since (not doublespeak but) "*Doublethink* means the power of holding two contradictory beliefs simultaneously, and accepting both of them,"[27] it is perhaps better here to revive the almost equally Orwellian notion of persuasive definition.[28]

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Egalitarianism and Option Rights

Friedman perceived a "contradiction in negative libertarianism: the fact that it bounds one person's negative freedom by that of another." This alleged contradiction lies in the supposed fact that "the same logic that leads me to respect your negative freedom would seem to impose obligations that violate mine. If you are entitled to my respect, why not also my care?" The argument supposedly linking these two propositions is that "if rights are equal, such that my freedom of action does not include the right to kill you, this must be due to the stipulation that there lies in you a higher moral value than my untrammelled liberty. Secreted within individualism, in other words is . . . egalitarianism."[29]

It is time to recall the relevant sentences from the American Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that are among these are life, liberty and the pursuit of happiness"; and "That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

Note first, what seems sometimes to be overlooked, that the first of these sentences does not end with a full stop after "all men are created equal." That clause is forthwith explicated by the assertion of an equality of rights, grounded in the equality of our common humanity. The rights thus claimed are option rather than welfare rights; rights, that is, to be left alone by other people; rather than rights to be provided with goods and services, also presumably by other people. The egalitarianism secreted within this individualism must be, though fundamental, extremely restricted. Certainly the option rights stipulated by the Declaration of Independence do restrict everyone's "untrammelled liberty" to murder anyone else. My right to life must be accounted a "higher moral value" than your "untrammelled liberty" to murder me, if but only if that "untrammelled liberty" constitutes a moral value of any order at all. So where is the contradiction which Friedman thinks to find here?

The reason why he believes that he has found a contradiction is that he quite wantonly, arbitrarily and tendentiously insists on defining "negative freedom" as "the freedom to do whatever one wants," without any restriction whatsoever, rather than in terms of universal and hence necessarily equal option rights. "The same logic that leads me to respect your negative freedom," so defined, would indeed "impose obligations that violate mine." But there is no contradiction in the contention that anyone's claim to such option rights generates a reciprocal[30] duty to respect the corresponding rights of everyone else. Instead the contradiction lies in the

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notion not of option but of welfare rights. For how could there be universal human rights to the provision of goods and services by somebody or everybody else?

Friedman asks: "If you are entitled to my respect, why not also my care?" If this is construed as a question about respect for other people's universal human rights, then the answer has been given already by first distinguishing option from welfare rights and then arguing that there are not and could not be universal welfare rights. (Remember Ayn Rand's killer question: "At whose expense?") But if appeal is to be made to some doctrine that all individuals ought to be equally respected or equally valued, then that doctrine is one which should be challenged strongly. For respect is something which has to be earned, and which neither can nor ought to be awarded indiscriminately. As for saying that all individuals are equally valuable, it is, surely, intolerably paradoxical to maintain that Lenin, Hitler, Stalin, Pol Pot and Mao Tse-tung were each no less and no more worthy to be treasured than any of their myriad murdered and tortured victims?[31]

Consequentialist Critiques

In the abstract at the beginning of his article Friedman says that "since the neoliberal critique of socialism seems to have been borne out by the events of 1989, neoliberal economists might now be expected to provide a similar critique of the new interventionist consensus. Yet there are few signs of their interest in doing so." Now what exactly is it which he believes that they ought, but apparently have not even begun, to provide? It can scarcely be anything very closely analogous to the work of von Mises and Hayek, showing that, without several property and the decentralized management of enterprises, economic rationality is impossible. But for there to be room for such closely analogous work in the case of the democratic welfare states, it would have to be the case that their economies, like those of actually existing socialism, were doomed to eventual collapse. But of that there are at present no signs.

Of course many, perhaps most, though certainly not all the interventions in these economies have unexpected and unfortunate consequences. And of course also many of their surviving socialist institutions are monumentally inefficient; for instance the public school monopoly in the United States[32] and the maintained school monopoly in the United Kingdom.[33] But how can we know that there is room for "a theory of the welfare state that draws together the many consequentialist criticisms of it,"[34] especially if such a theory is required to show that certain institutions are inherently and necessarily this or that? For we are members of a sort of

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creatures which can and cannot but make choices. And, wherever outcomes are determined by the senses of human choices, we can at most say that it is overwhelmingly likely that those choices will be made in some particular sense, but never that they necessarily must be. Hence we can in such cases never say what the outcomes will necessarily be.[35]

At one point it occurs to Friedman that "perhaps there is, in the end, nothing more than a long list of ad hoc economic objections to the vast number of different forms that intervention and redistribution take. But if that is the case, then, *if* consequentialist neoliberalism is to replace 'libertarianism' in grounding a generalized opposition to the welfare state, it must overcome the problem that without an overall theory of what is inherently inefficient or destructive about intervention, the great number of neoliberal objections to intervention will continue to appear, perhaps justifiably, to be held together by little more than a 'dogmatic faith in the benefits of the market.'"[36]

A Parthian Shot

But now, what is *dogmatic* about deploying a mass of empirical studies in support of a general mistrust? Surely *not* to deploy such evidence is precisely what to be dogmatic paradigmatically is? In any case complaints about dogmatism come peculiarly ill from a writer who again and again without supporting reason given makes assertions which must strike many readers as flagrantly false and/or—as with his dichotomy between moralistic and consequential concerns—plumb preposterous.

NOTES

1. An example apart from the main themes of Friedman's article is provided by his statement that "a society which is, by any measure, less and less racist . . . is more and more being consumed by racial conflict" (Jeffrey Friedman, "The New Consensus: II. The Democratic Welfare State," CRITICAL REVIEW 4, no. 4 (Fall 1990): 633–708, at 688. For if we construe "racism" as advantaging or disadvantaging individuals for no other or better reason than that they happen to be members of one racial set rather than another—and it is only in such an understanding that that term can refer to a sort not of heretical belief but of bad behavior—then racist practices are today in that society perhaps more widespread than ever before. Compare, for instance, generally, Dinesh D'Souza, *Illiberal Education: The Politics of Race and Sex on Campus* (New York: The Free Press, 1991); or, particularly, the report in Walter Williams's column in the *Washington Times* that in the sargeant's examination of the New York Police Department the pass marks

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are now: for whites 75 percent; for Hispanics 69 percent; and for blacks 65 percent.

2. In Chapter V of Lewis Carroll's *Through the Looking Glass* we read: "I don't know what you mean by 'glory,'" Alice said. Humpty Dumpty smiled contemptuously. "Of course you don't—till I tell you. I meant 'there's a nice knock-down argument for you!'" "But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected. "When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less." "The question is," said Alice, "whether you *can* make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master—that's all."
3. Another example is the mention made, as usual without any evidencing illustration, of "the troubling appeal of Nozickean 'libertarianism' to the social democratic left, despite the intolerable policy consequences to which it leads" (Friedman, 643). Who if anyone among those people—if I may borrow the phrase employed by General Lee to describe opposing Union armies—was when reading *Anarchy, State and Utopia* ever attracted to its libertarian doctrines, as opposed to its swinging and athletic style? The contrast with *A Theory of Justice*, here as everywhere else, is extreme. Compare on all counts Robert Nisbet's Critical Notice, reprinted in W. Letwin, ed., *Against Equality* (London: Macmillan, 1983).
4. Friedman, 636.
5. Ibid., 646, 635, emph. original. If there is any truth in this it is, surely, that Marx wanted to achieve the former by means of the latter?
6. Ibid., 657, emph. original.
7. K. Vorlander, *Marx und Kant* (Vienna: Verlag der 'Deutschen Worte', 1901), 22.
8. Marx, *Collected Works* (Moscow: Foreign Languages Publishing House and Progress Publishers, 1960–1970), vol. I, 421.
9. Marx and Engels, *The Communist Manifesto*, ed. A.J.P. Taylor (Harmondsworth: Penguin, 1968).
10. Among other utterances which should be considered in this connection is the statement in *The Civil War in France* (1871) that the proletariat "have no ideals to realize."
11. See, of course, Karl Wittfogel, *Oriental Despotism: A Comparative Study of Total Power* (New Haven: Yale University Press, 1957; reprinted as a Vintage Book in 1981); and compare Igor Shafarevich *The Socialist Phenomenon* (New York: Harper and Row, 1975).
12. Leopold Schwarzschild, *The Red Prussian: The Life and Legend of Karl Marx*, new ed. (London: Pickwick, 1986).
13. Ibid., 80.
14. Ibid., 154.
15. Perhaps the least inaccessible source for at least some of this critique, the

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source from which the following quotations are drawn, is G.P. Maximoff, ed., *The Political Philosophy of Bakunin* (New York: The Free Press, 1953).

16. So far no has ever attempted to meet my longstanding challenge to point to any passage or passages in the *Collected Works* in which Marx recognizes anything as constituting a difficulty for "our theory." See my "Was Karl Marx a Social Scientist?" in *Free Inquiry* XI, no.2 (Spring 1991): 37–41; and, for an examination of the obituary claim that Marx as a scientist was the equal of Darwin, compare my *Darwinian Evolution* (London: Granada/Paladin, 1984), III 3.
17. Friedman, 638, 638–9.
18. Ibid., 639.
19. Ibid., 689.
20. This is the moment to explain to the Greekless that the key word in the notorious Socratic contention usually translated "No one willingly does wrong" is that normally used for missing a target or making a mistake. So to a Greek that contention would not have sounded as outrageous as a claim that no one willingly does (morally) wrong.
21. Aristotle, *Nicomachean Ethics,* 1094a19–23.
22. Ibid., 1094a27–9.
23. Ibid., 1094b8–10.
24. See n14, above.
25. Friedman is entirely correct in insisting, with Kolakowski, that Marx was "a German philosopher" (646). And part of what that meant was that he had no respect for and little knowledge of what J.M. Keynes in *A Treatise on Probability* (Cambridge: Cambridge University Press, 1921) called "the English tradition of Locke and Berkeley and Hume . . . a preference for what is matter of fact . . . prose writers, hoping to be understood" (v-vi).
26. In George Orwell's *1984* (London: Secker and Warburg, 1949), we should recall, one of "the three slogans on the white face of the Ministry of Truth" was "FREEDOM IS SLAVERY" (30).
27. Ibid., 220. It is perhaps significant, and by no means without parallel, that the literary critic Raymond Williams appears to have been unable to bring himself to study *1984* with due care and attention. For in his *Orwell* (London: Collins/Fontana, 1971), his own contribution to the Modern Masters series, Williams describes what he lists as the Newspeak word "speedwise" as "ominously familiar." But it does not in fact appear in *1984*, and belongs rather to the journalistic telegraphese of Evelyn Waugh's *Scoop*. Again, Williams commends Orwell as "an intransigent enemy of every kind of *thoughtcrime*" (75, emph. in original); overlooking that "thoughtcrime" is Newspeak for the anti-totalitarian dissidence to which Orwell if not Williams himself was wholeheartedly sympathetic. For the record of Williams first as a Communist Party activist and later as an extremely energetic New Left fellow-traveller, see George Watson, *Politics and Literature in Modern Britain* (London: Macmillan, 1977), ch. 1 and passim.

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28. The notion of "persuasive definition" was introduced by C.L. Stevenson in an article so entitled, and published in *Mind*, for July 1938. A revised version appears as Chapter IX of his *Ethics and Language* (New Haven: Yale University Press, 1944). There Stevenson quotes a passage from Aldous Huxley's *Eyeless in Gaza*: "Freedom's a marvellous name. That's why you're so anxious to make use of it. You think that, if you call imprisonment true freedom, people will be attracted to the prison. And the worst of it is you're quite right" (215).
29. Friedman, 640, 641, 640–41.
30. A pupil once asked Confucius whether his rule of conduct might be epitomized in a single word: "The Master replied, 'Is not "reciprocity" the word?' " See *The Analects*, trans. W. Soothill (Taiyuanfu, Shansi: Soothill, 1910), XV 13.
31. For support for this contention see my "Equal Value: or Equal Rights to Equal Liberties?" in *Cogito* 4, no. 1 (Spring 1990): 25–8.
32. Compare, for instance, J.E. Chubb and T.M. Moe, *Politics, Markets and America's Schools* (Washington, D.C.: The Brookings Institution, 1990) and Myron Lieberman, *Privatization and Educational Choice* (New York: St. Martin's Press, 1990).
33. Compare, for instance, David G. Green, ed., *Empowering the Parents: How to Break the Schools Monopoly* (London: Institute of Economic Affairs, 1991), esp. 15–53.
34. Friedman, 638.
35. For heavy emphasis upon the methodological importance of these truths see Antony Flew, *Thinking about Social Thinking*, 2nd ed. (London: HarperCollins, 1992).
36. Friedman, 669–70.

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Tibor R. Machan

THE RIGHT TO PRIVATE PROPERTY: REPLY TO FRIEDMAN

In a recent essay Jeffrey Friedman has all but dismissed the idea that the right to private property is a logical extension of—i.e., sound conceptual inference from—the idea of individual liberty.[1] Among the numerous pejorative terms Friedman has applied to this idea we find "the alchemy of property appropriation." He has baldly asserted, without a shred of argument or even reference to arguments to be found elsewhere, that "no noncircular answer has been forthcoming" in defense of "the equivalence of individual liberty and private property."[2] He also dismisses, entirely cavalierly, Ayn Rand's sketchy but provocative arguments when he remarks that "Rand posited unfettered individual property ownership as being somehow congruent with the survival of 'man *qua* man,' failing to notice that every 'man' in history has managed to survive without such a right, and that the essence smuggled in via the '*qua* man' caveat merely begs the question of why atomistic or rational aspects of human nature should be privileged over sociable or irrational ones."[3]

I will not try to enlighten Friedman on the demands of scholarship and on the plethora of arguments he could have contended with had he had even the slightest inclination in favor of a scholarly approach to discussing his topics. His self-congratulatory tone throughout this essay—

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Tibor Machan is professor of philosophy, Auburn University, Auburn, AL 36849.

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dismissing all his adversaries as blind or dogmatic while implicitly and often explicitly anointing himself as perhaps the sole "open-minded" thinker in the field of work he traverses—suggests to me the uselessness of such an exercise.[4] Instead I will attempt to sketch one case that might be made in support of the view that property rights are indeed congruent with human nature and may be derived from one's knowledge of it. In other words, in this paper I wish to advance a defense of the right to private property as understood within the framework of classical liberal political economy. This may provide readers with at least one possible counterpoint to Friedman's belittling of any Randian type case for an intimate connection between the right to individual liberty and private property rights.

One instructive way to understand the nature of the right to private property is to consider how it was understood by its main critic, Karl Marx. Marx states that "the right of man to property is the right to enjoy his possessions and dispose of the same arbitrarily without regard for other men, independently from society, the right of selfishness."[5] This is a rather good definition. The right to private property—be it to a toothbrush or a steel factory—authorizes a person to use what he or she owns as he or she sees fit without regard for other persons. And this use can be reckless as well as prudent—or have any other quality—but may not invade the rights of others.[6]

Now the largely practical usefulness of the institution of private property rights has been defended by many, starting perhaps with Aristotle[7] and more recently in connection with Garrett Hardin's restatement of Aristotle's point in his "The Tragedy of the Commons."[8] Yet there is more to the merits of the right to private property than practical usefulness. The following may make this clear.

If one is on a desert island all by oneself, the issue of property rights is of no significance, because there is no one else who could threaten one's authority over what one is going to do and how one will manage the natural world that surrounds one. But if there is somebody else—if, for example, Robinson Crusoe is met by Friday—both now have the choice to be good, bad or mediocre in their impact on one another. They are moral agents who may get in each other's way with their morally wrong choices and actions. In his choice of actions Friday might damage Robinson Crusoe, or he might acrrue benefits and goods which Crusoe may not share in without Friday's permission. It will be valuable to be able to determine what Crusoe may do and what Friday may do so that both of them have a say about whether and when they want to cooperate. This, in brief, spells out one of the moral functions of private property rights—such rights identify what Robert Nozick called "moral space" around per-

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sons within which, if adequately protected, they can be sovereign agents.[9]

So we can appreciate that from the point of view of morality everyone needs to know one's proper scope of personal authority and responsibility. One needs to know that some valued item, skill or liquid asset is in one's own jurisdiction to use before one can be prudent, creative, courageous, charitable or generous. If one does not know that some particular area of human concern is under one's or other people's proper authority, then one could not know if it will be courageous, foolhardy, or silly to protect it, whether it will be generous or reckless to share it, etc.[10]

So, then, private property rights are, in the first place, social preconditions to the possibility of an extensive personally guided morally significant life. (That community property may accomplish this by way of certain rules attached so as to assign individuals various roles and the use of various items that they do not own is a myth.) Those assigning the rules are here dealing with the commons, with all of its attendant pitfalls.[11]

Private property rights make it possible to be a moral agent. If one is to be generous to the starving human beings in the Sudan but one has nothing of one's own from which to be generous, generosity will not be possible.[12] So there is a necessary connection[13] between a practical moral code or set of guiding moral principles and the institution of private property rights.

John Locke was only partially aware of the moral significance of private property rights, roughly along lines sketched above. He made a connection between acting freely and responsibly as moral agents and having the right to private property. He defended the institution of the right to private property as well as the way that property might be assigned. But his defense of the way property is to be assigned is in need of some repair.

The fact that private property rights are a necessary condition for the personal moral life of human beings—without a sphere of personal authority they will not know what to do with the persons and things around them—does not yet solve the problem of how property rights ought to be assigned over various valued items, including one's skills and time.

Why is such assignment important? For one, property rights have to be compossible—each person's right to private property must be compatible with all other persons' similar rights. Any system of incompossible rights is a flawed system. It is inconsistent and leads to internal conflict. Of course, conflicting *claims* to having rights (to something) can still arise because if people have free will they are able to either exercise their property rights or violate those of others, unless they are stopped or somehow they are prevented. So just because private property rights may be in

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principle compossible—just because they can co-exist next to each other—it doesn't mean that people will not violate each other's rights. If, however, they are not compossible, and no harmonious assignment of them can be brought about, at least in principle, that means there is no way to avoid violating other people's rights and the system is not possible to implement.[14]

But is there some method whereby a correct or justified assignment of property rights is possible?

What might be a justified assignment of property rights to various items that can be owned by people? Locke advanced the theory that when one mixes one's labor with nature, one gains ownership of the part of nature with which the labor was mixed. While initially nature is a gift from God to us all, once we individually mix our labor with some portion of it, it becomes ours alone.

Yet this idea has problems partly because the idea of "mixing labor with nature" seems ambiguous. Does discovering an island count? Does exploring it? Does fencing it in? Does identifying (discovering) a scientific truth count as mixing labor with nature? What about inventing something? And how about trade—should the act of coming to mutually agreed-to terms count as mixing one's labor with something of value?

A revised notion has been advanced via the theory of entrepreneurship. This idea was advanced by Fordham University philosopher James Sadowsky[15] and New York University economist Israel Kirzner,[16] at about the same time. Ayn Rand also advanced a sketch of a moral case for the system that emphasizes the central role of individual good judgment, of which entrepreneurship is a species.[17]

The notion is that the exercise of judgment fixes something as of potential value to oneself or others and earns oneself the status of a property holder. Judgment, after all, is not automatic, nor need it involve actual overt physical labor. It is a freely made choice involving the quintessential human capacity to think, to reason things out, in this case applied to some aspect of reality and its relationship to one's goals and purposes in life.[18] One makes the choice to identify something as having potential or actual value. This gives it a practical dimension, something to guide one's actions in life. One may be right or wrong about this, but in either case the judgment brings the item under one's jurisdiction on a kind of first-come first-served basis. George selects some hole in the ground as of potential value, and then George has rightful jurisdiction over it and may explore it for oil, minerals, a museum or a private home. George may have been right or wrong to make this selection—indeed, the hole may not come to anything at all—it may be dry, so to speak. But by his selecting it he has appropriated it. And the appropriation has moral significance because it

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exhibits an effort of prudence, of taking proper care of himself and those he is responsible for. George's attempt to act prudently, to exercise the virtue of prudence, by his judgment and subsequent exploitation of what he has chosen to appropriate, is potentially morally meritorious. And to live as a moral agent, George must be free to make such attempts without intrusions by others.

Evidently some find this approach, building the market system block by block, disconcerting and wish for a kind of God's-eye-viewpoint, instead, calling that a systems perspective. This line of thinking among those sympathetic with classical liberalism is widely encouraged by invisible hand type arguments, including the Hayekian idea of the spontaneous order. This approach, however, seems to me to be wrong because it omits from consideration that each analyst is himself or herself an individual seeking to make his or her contribution to the social order individually. Indeed, there is no other way to go. What makes it appear that there is, is the pervasiveness of utilitarian and similar collectivist approaches to political theory.[19]

It may now be asked, could it not be that (a) individual immoralities will produce good consequences or (b) individual moral acts will produce bad consequences? As far as I can determine, both suppositions are impossible. They both assume a topsy-turvy universe at least within human affairs, something that is metaphysically impossible and conceptually at most "logically possible," especially if we omit the details. So we are left, after all, with the single perspective of the individual who, however, can imagine himself or herself as occupying other persons' circumstances, as well as that of the historian of political ideas and systems, and thus achieve as much universality as is possible to anyone. But there are no double perspectives here, only greater and lesser generality or narrower and wider breadths of vision.[20]

This is the beginning. In complex social contexts such as in an industrial society, acquisition occurs via thousands of small and large acts of discovery, investment, saving, buying and selling, with willing participants who embark upon the same general approach to life. Yet no one is coerced into one particular approach either—which accounts for what Nozick made note of in his defense of capitalism,[21] namely, capitalism's hospitality to diversely conceived utopias, to experiments with great varieties of human conceptions as to the good social life. This is evident in all the experimental communities, churches, artistic colonies, economic education and scientific organizations that abound in what has come to be perhaps the most closely capitalist, private property respecting large society in human history.

Moreover, theoretical defenses of the system of private property rights

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do not begin to answer all the questions that arise concerning the best application of that system vis-à-vis the multitude of complex problems involving property acquisition and use. While the 1980s ushered in the movement toward privatization throughout the globe, including Eastern Europe's abandonment of the planned economic system, we are still far from having full confidence in the power of such a system of individual property rights.

Defenders, however, argue that compared to all other alternatives, the system has proven itself precisely in that individual lives are more just and beneficial in it (or those that come the closest to it).[22] And if consistently upheld, then when problems arise the courts adjudicating the difficulties will arrive at the required answers concerning particular application of the right to private property—in everything from radio signals to frozen embryos, the air mass and segments of water. Without elaborate legal and technical discussion, which will be prevented by the application of alternative models, the great potential of the system will remain unexploited—for example, regarding environmental and ecological concerns.

Summarizing, then, one serious candidate for the philosophical moral defense of the private property rights system, we have two related grounds giving the institution its moral justification: the right to private property is a necessary component of "moral space" and it makes the realization of rational or prudential conduct possible vis-à-vis our non-human and our social world—i.e., undisturbed or unowned nature and voluntary human actions of others. Unless these are sound grounds, that system is eventually probably going to be defeated as a political alternative for the modern world for lack of moral support.[23]

NOTES

1. Jeffrey Friedman, "The New Consensus: II. The Democratic Welfare State," CRITICAL REVIEW, 4, No. 4 (Fall 1990): 633–708.
2. Ibid., 664.
3. Ibid.
4. Friedman employs a standard of epistemic adequacy in his criticism of others that he hasn't anywhere shown to be appropriate. His preference for the empirical approach to forming basic political and economic concepts is suggestive but unfounded on anything that should impress those seeking answers in these areas. On a rather plain level it might make some difference to Friedman to consider that human beings generally benefit from having reasonably good answers to questions prior to carrying on with their lives. They need ideas to guide what they will do—thoughtlessness is nothing to be proud of. It leads to recklessness. But the

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empirical method has this problem of denying the very possibility of valid definitions or theories without already having done what one needs understanding of. Furthermore, formulating sound definitions need not preclude revising them—just consider J. L. Austin's fine observation of this fact in his "Other Minds," in his *Philosophical Papers* (Oxford: Oxford University Press, 1962).

5. Karl Marx, *Selected Writings* (Oxford: Oxford University Press, 1977), 54.
6. The exact characterization of such rights is not simple—see my books *Human Rights and Human Liberties* (Chicago: Nelson-Hall, 1975) and *Individuals and Their Rights* (LaSalle, Ill: Open Court, 1989) for the details as I have been able to assemble them.
7. Aristotle said, "That all persons call the same thing mine in the sense in which each does so may be a fine thing, but it is impracticable; or if the words are taken in the other sense, such a unity in no way conduces to harmony. And there is another objection to the proposal. For that which is common to the greatest number has the least care bestowed upon it. Every one thinks chiefly of his own, hardly at all of the common interest; and only when he is himself concerned as an individual. For besides other considerations, everybody is more inclined to neglect the duty which he expects another to fulfill; as in families many attendants are often less useful than a few" (*Politics*, 1262a30–37). While put mostly in pragmatic terms, both Aristotle's and Hardin's analysis of the function of private property rights contain a vital normative component—namely, it is a necessary condition for some kinds of moral conduct in societies. For more, see my "Pollution, Capitalism and Socialism," *Journal des Economistes et des Etudes Humaines* (March 1991). See, also, extensive discussion of the normative dimensions of the tragedy of the commons in my *Private Rights, Public Illusions* (New York: Holmes & Meier, 1993).
8. Garrett Hardin, "The Tragedy of the Commons," *Science* no. 163 (December 13, 1968).
9. Property rights are necessary for this since human beings are not disembodied souls who can carry out morally significant conduct away from nature. Property law in a society based on the individual's rights would keep track of the extent and nature of much of that moral space—e.g., in copyright, trespass and nuisance law.
10. In my *Human Rights and Human Liberties*, 125–6, I recount a story told by Norman Malcolm about Wittgenstein's impromptu conceptual analysis of "owning" something.
11. Consider that in a sense the U.S. Treasury is a kind of communal property to which certain rules have been—and are repeatedly being—assigned. But because it is a commons, it ultimately succumbs to the tragedy of the commons. Note, for example, that regulatory bodies and grant making agencies do not have legal liability for their mistakes. They may be voted out, and that is the worst that will happen to them. No one sues the

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Federal Aviation Administration when an airliner crashes, even though it is the agency responsible for the safety of air travel. (I say more about this later in this discussion.)

12. When Friedman remarks, rather arbitrarily and contrary to extensive evidence, that "every 'man' in history has managed to survive without such a right" to "unfettered individual ownership," he might consider that *de facto* private property ownership has been far more pervasive in history than *de jure* private property ownership. It is arguable, however, that most human beings have had but a significantly limited range of personal authority respected and protected throughout history, thus most likely contributing to what I have called in several other works on related topics "the moral tragedy of the commons."
13. By this I do not mean "formally necessary." See my "Epistemology and Moral Knowledge," *The Review of Metaphysics*, September 1982, for more on this point. The discussion appears, also, in *Individuals and Their Rights*. For a defense of natural necessity against Humean type objections, see Milton Fisk, *Nature and Necessity* (Bloomington: Indiana University Press, 1973).
14. Some will insist that we can have all the above by way of communal property, provided the rules governing its private use are well designed. But this suggestion misses the central point—namely, that when the design of rules is separate from the core elements of ownership—such as origination, creation, production, and interest—the rules will not likely reflect prudence and good judgment as they do when private ownership prevails. Here it is useful to again recall the point Aristotle made, quoted above, and reiterated somewhat more elaborately by Hardin in his "The Tragedy of the Commons," namely, that communal ownership, which precludes exclusive individual control as a matter of legally protected right, produces the sort of negligence and reckless use associated with air pollution, especially in collectivist systems. Here, from the failure to appreciate that individuals make and thus are justified in holding and using things emerges confusion concerning moral, including prudential, responsibility for social wrong-doings.
15. James Sadowsky, "Private Property and Collective Ownership," in Tibor R. Machan, ed., *The Libertarian Alternative* (Chicago: Nelson-Hall, 1974), 119–33.
16. Israel Kirzner, "Producer, Entrepreneur, and the Right to Property," *Reason Papers* no. 1 (Fall 1974): 1–17. Kirzner identifies Frank Knight as someone who has also identified "the ethical implications of producing" via entrepreneurship.
17. Ayn Rand, "The Objectivist Ethics," in her *The Virtue of Selfishness* (Signet Books, 1961). Indeed, this line of defense of private property rights has been implicit in any ethics that stresses right reason and prudence as virtues. See, also, William of Ockham's characterization of "natural right

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[as] nothing other than a power to conform to right reason, without agreement or pact" (*Opus Nonaginta Dierum*).

18. I develop these points—based on a defense of the possibility of formulating a non-circular definition of the concept "human being" that does not fall prey to familiar arguments against the possibility of objective definitions—in my *Individuals and Their Rights*. It is particularly curious that Friedman dismisses the Randian approach to essences when it is perhaps the topic on which a great deal of work has been done by some philosophers who have found Rand's approach fruitful—see Douglas Rasmussen's work, in particular. For a good beginning, see Douglas J. Den Uyl and Douglas Rasmussen, "Ayn Rand's Realism," in the authors' edited book, *The Philosophical Thought of Ayn Rand* (Urbana: University of Illinois Press, 1984): 3–20. See, also, for a fuller exposition of the authors' views, *Liberty and Nature: An Aristotelian Defense of Classical Liberal Order* (LaSalle, Ill.: Open Court, 1991).
19. Furthermore, there is no less of a systemic approach involved in the defense of the polity of classical (natural rights) liberalism, including, especially, its structure of private property rights, than in some grandiose social contract, utilitarian or welfare statist structure. It is only the genesis of the private property rights system that is different, beginning its analysis, as it does, with reference to human nature and the individual human being's good.

    It is, moreover, vital to notice that such a systems approach, if we wish to call it that, has the advantage of keeping its feet on the ground, as it were, rather than speculating on what will happen in societies based on impersonal abstract models. In so far as both in ethics and politics what we want is some structure in terms of which predictions may be made concerning the opportunity for citizens to mutually flourish, at least optimally, grounding a system on our best understanding of human nature would appear to promise the best results. Of course, there are certain metaphysical presuppositions involved in this which, no doubt, some folks tend to demean. Well, then, let's argue out the metaphysics instead of simply assume it away.
20. Indeed, the danger is to grant full legitimacy to those who argue from the systemic viewpoint for those are the persons who obliterate what is of ultimate significance in the classical liberal tradition, namely, the life of the individual person in his or her community.
21. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), Part III, "Utopia."
22. It might be objected that this is, after all, an argument based on the comparison of systems of law or political principles. While it is, of course, a comparative approach—as all arguments about means must be—it does not lose sight of the measure of success of such systems, namely, whether individual human lives are able to flourish within them. Without focusing

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on this basic measuring device, there would be no way to tell which system is better, since one could arbitrarily choose the objective to be served. (Here is where the current pragmatic approach championed by Richard Rorty and Co. cannot result in any decisive choice between systems of law. See Richard Rorty, *Objectivity, Relativism, and Truth* [Cambridge: Cambridge University Press, 1991], wherein the entire issue of what kind of polity is sound is simply thrown into the laps of "one's community," thus begging all the most interesting and vital questions, e.g., how does one choose between competing communities, each claiming to be the most just?)

23. It has been suggested to me that not appreciating the contrast between the individual and the systemic approaches in Friedman's discussion will simply leave these comments missing their mark. Yet, might it not be wise to consider that Friedman's impersonal systemic approach is itself a nonstarter—indeed, part of the problem, rather than a candidate for a solution—since no one is in the position to address the system *in toto*, from "outside" (whatever that means), not unless we do this kind of analytic-evaluative work in, say, Iraq or Iran where systems may be imposed by those not subject to its features.

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Donald N. McCloskey

MINIMAL STATISM AND METAMODERNISM: REPLY TO FRIEDMAN

Friedman misunderstands postmodernism—or, as it could better be called, metamodernism. Metamodernism is the common sense beyond the lunatic formulas of the Vienna Circle and conventional statistics. It has little to do with the anxieties of Continental intellectuals. It therefore is necessary for serious empirical work on the role of the state.

Jeffrey Friedman, in a recent issue of CRITICAL REVIEW to which I contributed, rejects what he imagines to be postmodernism.[1] I sympathize with his call for empirical studies of the consequences of statism and nonstatism. And I agree that philosophical libertarianism has reached a dead end (in *The Review of Austrian Economics*, for example). But with such a program Friedman should embrace rather than reject postmodernism, correctly defined.

Whatever you think you have learned about it from *The New York Times*, postmodernism is mainly not from France. It is mainly not leftwing. It is mainly not deconstruction. It is mainly not about The Crisis of Reason or The Exhaustion of the Enlightenment Project or other

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Donald N. McCloskey is Director of the Project on Rhetoric of Inquiry, 700 Seashore Hall, University of Iowa, Iowa City, IA 52242, telephone (319) 335-2290, telefax (319) 335-1956.

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Franco-German anxieties. On the contrary, it is plain old American pragmatism, (Kenneth) Burkean criticism, (Wayne) Boothian pluralism. It is what its name says: a suggestion that we go beyond the formulas of rigid modernism. Perhaps "metamodernism" would better convey what people like Richard Rorty or Stanley Fish or Gary Madison, Calvin Schrag, and me are talking about in the same issue of CRITICAL REVIEW. (My Iowa colleague and friend David Roochnik is an intermediate case.)

Friedman is unwise to try to hitch his minimal statism to the rigidities of modernism in the style of the Vienna Circle, the modernist movement in architecture, and anglophone analytic philosophy circa 1955. Minimal statism rests easier, I would suggest, with Madison's "small-t truth," Schrag's "transversal rationality," and my "conjective." These are metamodern attempts to get away from the 3″ × 5″ card epistemology that has run the world since 1920. They are not rejections of reason. On the contrary, they ask that after learning what we can from modernism we now go back to examining all the reasons.

Friedman in his introduction, and Carl Rapp in what Friedman describes as the "climactic essay in this issue," miss the point of metamodernism because they are caught in the modernist dichotomy of the rational vs. the irrational.[2] They believe that whatever does not fit the formulas of French rationalism or British empiricism must be irrational, and easy therefore to convict of self-contradiction.

Rapp, with Friedman cheering him on, believes for instance that he has made a knock-down argument when he shows that anti-philosophy must entail a philosophy, too. (Roochnik also seems to take this line.) As we kids used to say in the 1950s, biiiiig deal. The argument is the oldest of philosophy against rhetoric. Right from the beginning it has had the problem that it can be matched by a rhetorical reply: Do you not see, oh philosopher, that your philosophy entails a rhetoric, too? That rhetoric entails a commitment to a working epistemology is no more knock-down than that philosophy entails a commitment to a working rhetoric of persuasion. The score in the game of blackboard logic, as always, is fifteen all.

Friedman asks, "Without the discipline imposed by a putatively objective, non-metaphorical reality, is not each interpretive community licensed to convert its instincts into sacred cows on the ground that there is no higher standard of truth than whatever is arbitrarily self-imposed?"

Briefly, No: to admit that our only standard is our interpretive community is not to surrender to *arbitrary* standards, but to standards. There are no timeless standards outside those of an interpretive community. As Aristotle put the point, "Since the persuasive is persuasive to someone . . .

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rhetoric theorize[s] . . . about what seems true to people of a certain sort, as is also true with dialectic."[3]

In my article I mentioned the attack on Critical Legal Studies by Stanley Fish in his book *Doing What Comes Naturally*.[4] Fish is well known for his relativism and postmodernism and trendy leftism. Why then does he not thrill to the late-1960s tactics of Critical Legal Studies? Because the Crits do not reach the standards of the interpretive community. Fish, the notorious constructivist, complains that for the Crits, "all of a sudden 'constructed' means 'fabricated' or 'made up'" (Fish 227). Fish is consistent and Fish is correct. "Rational debate," he says, "is always possible; not, however, because it is anchored in a reality outside it, but because it occurs in a history" (196). Yes. That a speech community must be addressed is a tighter, not a looser, constraint on what arguments are sustainable than the formula of modernism. Fish and I believe that modernism, whether rationalist or irrationalist, has some screws loose. Metamodernists propose to tighten them up. The conservatives want to carry, screwily, on.

Friedman says that "the fusion of postmodernism with minimal statism is . . . counterproductive." On the contrary, without metamodernism it is next to impossible to assemble the consequentialist, empirical studies about statism that Friedman wants—and that I as a historical economist desire and have on occasion provided.

One empirical problem is that modernism is an excuse to ignore evidence, that is, to ignore a part of the interpretive community. Take the issue of whether capitalism in the form of mining towns was beneficent. If not, then the State's interventions during the twentieth century might be justified, consequentially speaking. In a recent history of soft-coal mining early this century, the historical economist Price Fishback finds reason to think that company towns worked well.[5] Fishback uses all the evidence, regardless of its standing in the modernist handbooks on method: he uses the direct testimony of the miners and the statistics from surveys; he uses what people said they thought and what they can be ascertained to have done. He finds the consequences because he allows himself to use all the evidence.

The other empirical problem with Friedman's modernism is that the "discipline" he mentions of "non-metaphoric reality" is phony. Since Mary Hesse's *Models and Analogies in Science* (1963), or Kant, it has been impossible anyway to claim that we can get along without metaphors. But the main point is that the "discipline" doesn't bite in practice. Modernists talk a lot about "discipline" and "rigor" and "compelling proof," in a vocabulary approaching the sado-masochistic, but when it gets down to the whips and chains they don't carry through. Better to have a real discipline of relativist practice than a phony discipline of absolutist theory.

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The phoniness has been exposed repeatedly in metamodernist literature. I have shown, for example, that the alleged "standards" of modernist economics are phony, concealing ideology or careerism behind an appeal to objectivity.[6] Statistical significance, to take a ripe case, which runs the quantitative side of economics, is no standard at all. It can be shown mathematically that statistical significance is in most cases no better than, say, drawing up a horoscope for the time and date at which the computer ran the regression. It would be better if economists recognized that the question of how large is large must be decided by discussion in the speech community. It would be better, in other words, if they realized that all science is "conjective," not either objective or subjective. The rhetoric of objectivity stops the discussion and leaves economists, practically speaking, with no standards at all.

For example, an economist allowed to pretend that statistical regression is objective cannot understand homelessness. She will exhibit statistically significant coefficients attached to the price of low-income housing, and conclude hastily that state subsidies are what is needed.[7] Since she is not being asked to face the arguments of a speech community, and writes instead for God's objectivity, she can walk past the next question: why then is the price of low-income housing high? She can therefore write a long book on homelessness, filled with interesting modernist evidence, yet not mention the cause, namely, the zoning and building codes and slum clearances that have eliminated low-income housing in favor of the middle class. It is a consequentialist argument against statism in housing, overlooked by modernism.

Friedman asserts that interpretive communities must in practice act as though their standards were "transcendent." As do other philosophical conservatives, such as Rapp, he thinks he can pin a charge of self-contradiction on non-transcendent thinking. As usual the pin does not hold. Only children (and Platonists) need transcendence. The children in *The Lord of the Flies* must worship absolutely the pig's, and Piggy's, head. But communities of adults have in practice no difficulty recognizing that their standards are not God's own, not transcendent and not ahistorical, while affirming that the standards are nonetheless worth enforcing. It is not the case empirically, as philosophical conservatives fear, that adults will descend into a war of all against all if they lose their faith in God or in the synthetic a priori or in some other principle of transcendence. The engineering standard for the height of road crowns is nowhere inscribed by the finger of God, and yet a contractor who fails to abide by it accepts that he needs to rebuild the road. The standard of replicability in biological experiment is not absolute, and cannot in principle be so. And yet the community of biologists can

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recognize conjectively, well enough, when an experiment on oxidative phosphorylation has gone wrong.[8]

Friedman thinks that without a belief in transcendence we "would have no criteria of what counts as persuasive." Huh? Come again? Why exactly is that? He does not say. The argument he sketches is philosophical rather than empirical (for someone who advocates "hard thinking and empirical research" Friedman, with Rapp, puts a suprising amount of weight on sketchy blackboard arguments). But his assertion is self-contradictory even as philosophical argument. You can see it is by noting that it damages his own position as much as the position he is attacking. His words can be turned against himself: "By trying to achieve non-conjective Truth in God's eyes one tends to overlook one's own unarticulated, relative truths. To try to do away with theory is a recipe for bad theory." The anti-rhetoric of philosophy is, as I say, no more knock-down than the anti-philosophy of rhetoric.

Gary Madison is quoted by Friedman saying that modernism subscribes to a "Promethean illusion that by means of theory we can manipulate and control human affairs however we desire." Friedman calls this a "dubious reading of modern history," but again does not pause to say why. Madison's description would satisfy empirically most members of a speech community who have lived through communism and anti-communism, Vietnam and the expansion of the modern state. I think it was Eric Hoffer who described the illusion of modernism as the notion that we can in fact accomplish everything we rationally propose to do. With such rationalism who needs irrationalism? And what else would you call it but a "Promethean illusion"? "All their doings were indeed without intelligent calculation until I showed them the rising of the stars, and the settings, hard to observe. And further I discovered to them numbering, pre-eminent among subtle devices. . . . It was I who arranged all the ways of seercraft, and I first adjudged what things come verily true from dreams."[9]

The argument in favor of appropriating metamodernism for the tasks of minimal statism is simple. It is that metamodernism deals with more of the data and speaks to a wider audience than the crabbed and useless rules of modernism—witness the vacuity of general equilibrium theory in neoclassical economics and the inconclusiveness of mainstream econometrics. Friedman's assertion that metamodernism is somehow inimical to minimal statism is the reverse of the truth. A discussion that keeps speaking in the false rhetoric of modernism will not be able to do the job. If economists actually followed modernism they would long ago have fallen silent on the empirical questions that Friedman and I want answered. Instead they have adopted metamodernism without knowing it, by silently dropping the phony "standards" thought up by philosophers shooting the breeze in

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warm rooms. It would be a shame if the job of dismantling the modern state where it deserves to be dismantled were made more difficult by a comfortable conservativism in method. Actually, it already has.

NOTES

1. Jeffrey Friedman, "Postmodernism vs. Postlibertarianism," CRITICAL REVIEW 5, no. 2 (Spring 1991): 145–58.
2. Carl Rapp, "The Crisis of Reason in Contemporary Thought: Some Reflections on the Arguments of Postmodernism," CRITICAL REVIEW 5, no. 2 (Spring 1991): 261–90. Interpreting postmodernism as a belief in "the terminal incapacity of reason" (290) is going to make it easy to view it as irrationalist in the modernist sense.
3. Aristotle, *Rhetoric*, trans. George A. Kennedy (New York: Oxford University Press, 1991), I, ii, 11; 1356b.
4. Stanley Fish, *Doing What Comes Naturally* (Durham, N.C.: Duke University Press, 1989).
5. Price Fishback, *Soft Coal, Hard Choices: The Economic Welfare of Bituminous Coal Miners, 1890–1930* (New York: Oxford University Press, 1992).
6. D. N. McCloskey, *The Rhetoric of Economics* (Madison: University of Wisconsin Press, 1985), esp. chs. 1 and 9; and D. N. McCloskey, *Knowledge and Persuasion in Economics* (Cambridge: Cambridge University Press, 1993), esp. chs. 8–10.
7. Martha R. Bort, *Over the Edge: The Growth of Homelessness in the 1980s* (New York: Russell Sage Foundation, 1992).
8. Michael Mulkay, *The Word and the World: Explorations in the Form of Sociological Analysis* (London: Allen and Unwin, 1985).
9. Aeschylus, *Prometheus Bound*, trans. David Greene, in David Greene and Richard Lattimore, eds., *Greek Tragedies*, vol. 1, (Chicago: University of Chicago Press, 1942 [1960]), lines 452–61, 478.

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*Jeffrey Friedman**

AFTER LIBERTARIANISM: REJOINDER TO NARVESON, MCCLOSKEY, FLEW, AND MACHAN

Postlibertarianism means abandoning defenses of the intrinsic *justice of laissez-faire capitalism, the better to investigate whether the systemic* consequences *of interfering with capitalism are severe enough to justify laissez-faire. Any sound case for laissez-faire is likely to build on postlibertarian research, for the conviction that laissez-faire is intrinsically just rests upon unsound philosophical assumptions. Conversely, these assumptions, if sound, would make empirical studies of capitalism by libertarian scholars superfluous. Moreover, postmodern approaches to "libertarianism" perpetuate the same assumptions, in the guise of a critique of the rationalist hubris that has supposedly led to the tragedies of the twentieth century.*

The "libertarian" and postmodernist critics of postlibertarianism either ignore the assumptions undergirding their views, or they contend that these assumptions are not necessary when "freedom" and "morality" are properly defined. The latter contention amounts to an attempt to define the challenge to "libertarianism" out of existence.

Let me begin by summarizing the main arguments I made in "The New Consensus: I. The Fukuyama Thesis," "The New Consensus: II. The Democratic Welfare State," and "Postmodernism vs. Postlibertarianism."[1] I ask the reader for forbearance during this summary, since the arguments

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being recapitulated, by questioning the libertarian logic that sustains certain accepted definitions of such terms as "freedom" and "morality," will initially seem paradoxical if not bizarre. Since my critics focus almost exclusively on these definitional matters, I will resist the temptation to *defend* my positions on them until I turn to my critics' various responses.

1. The case that Austrian economists Ludwig von Mises and F. A. Hayek made against the viability of an advanced socialist economy explains the economic collapse of Communism and provides a general argument against all forms of central economic planning.

2. No such argument has yet been developed against the interventionist, redistributive modern state, i.e. the welfare state.[2] The general, "philosophical" libertarian arguments against the welfare state founder, I wrote, on at least the following two contradictions:

a. *The contradiction within negative libertarianism.* Edmund Burke wrote that "the effect of liberty to individuals is that they may do what they please; we ought to see what it will please them to do, before we risk congratulations which may be soon turned into complaints."[3] I called those who disagree with Burke, and find *intrinsic* value in the freedom to do whatever one wills (as long as one does not thereby infringe upon the equal freedom of others), *libertarian liberals* or *negative libertarians*.

Positive libertarianism goes deeper in criticizing libertarian liberalism than even Burke. Not only does it ask, as Burke did, why one person's negative liberty should be intrinsically valuable to others; the more important positive libertarian question is why it is valuable for oneself. As Burke says, negative liberty allows one to do what one pleases; but it also allows one to do what one does not please, since it legitimizes not only the options we choose, but those we do not. Now, it is in the nature of deciding to do one thing rather than another that one has judged the first course to be the superior one. To be able to do what one wants is thus to be able to do what one thinks is *better* than the alternatives. And so, if negative freedom is good because it lets one do what one wants, it is because this means being able to do what (one thinks) is best. Why, then, should one also value the freedom to do what (one thinks) is worse than what is best? Why is there intrinsic value in being able to choose to do what is wrong?

The distinction between *better* and *worse* options is recognized not only by the individual faced with a choice, but by libertarian liberalism itself, for even negative libertarians do not sanctify *all* individual choices, but only those that are non-coercive. Negative libertarians do not hesitate to infringe upon my freedom to choose to coerce another, and not just because there is no practicable way for us all to be free to coerce each other. For coercion is, to libertarian liberals, *wrong*. Consequently, negative libertarians do not hesitate to prohibit coercion. Why, then, do they

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stop at prohibiting coercive choices rather than *all* wrong choices? Surely the right to do what is wrong is self-contradictory: freedom to do what is wrong is itself wrong (at least when considered apart from consequentialist considerations).

The positive libertarian position just outlined, it should be noted, does not attack *non-liberal* defenses of negative freedom, according to which negative freedom is instrumental to other ends, such as the development of certain forms of society—which are, in turn, seen as instrumentally or intrinsically good. All that it questions is negative freedom as an end in itself. How can it be good to be free to do what is bad?

The alternative that seems better to accord with the distinction between better and worse choices is to value the freedom to choose what is right. This posture could, *in the abstract*, justify paternalism, for it defines as coercive whatever forces—external or internal, physical or psychological—deflect someone from doing what is right. Conceivably, then—apart from the practical considerations that usually render paternalism ineffective or worse—a positive libertarian could favor the use of physical force in order to undo a psychological force that compelled someone to do something bad. Most modern positive libertarians, however, including Rousseau and Marx, have instead chosen the *radical* path of trying to eliminate the social structures they believe lead people to do bad things, so that in a just society, people will not need to be "forced" to be positively free. They have, in short, tried to reform society so that positive and negative liberty would be compatible with each other.

b. *The contradiction in laissez-faire "libertarianism."* An additional contradiction besets those libertarian liberals who claim that a regime of absolute private property uniquely instantiates negative liberty. I call these liberals "libertarians," using scare quotes to indicate that they are not as true to libertarian premises as their welfare-statist fellow liberals.

Underlying all forms of libertarian liberalism (henceforth *liberalism*) is egalitarianism. (Max Stirner, the nineteenth-century German philosopher who favored negative freedom only for himself, was for that reason not a liberal.)[4] As we have already noted, negative libertarians defend individual liberty only when it is compatible with the equal negative freedom of others; they thereby recognize that the equal value of all individuals trumps the freedom of action of any one of them. But liberals do not merely conceive of others' moral value as imposing limits on one's liberty: by defining one's liberty as a matter of rights that inhere in all individuals, liberals make liberty *inseparable from* equality. This explains the steady leftward movement of liberal thought over time. Liberals have gradually seen that their doctrine of respecting the right of all individuals to choose freely not only precludes mandatory religious obligations and censorship,

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but requires the equal distribution of the economic means to pursue one's freely chosen course. The doctrine of equal human worth that underlies the liberal ban on coercive actions implies welfare rights, not in order to supersede negative freedom, but to instantiate it by actualizing the individual's equal right to do what he or she wants.

Only a liberalism that seeks to equalize people's life chances is true to its underlying egalitarian premises. By contrast, the "libertarian" utopia of inviolable private property rights, by allowing great inequalities in the means for achieving individuals' equally valuable chosen ends, contradicts the egalitarianism implicit in the libertarian rejection of Stirnerism in favor of equal protection for individuals from coercion. If not just one person's but everyone's freedom is the libertarian goal, then continually redistributing property so that everyone is equally free to achieve what he or she wants is (in the abstract) more consistent with libertarianism than is laissez-faire capitalism.

3. "Libertarians" often defend unequal private property holdings not on the basis of the intrinsic value of negative freedom, but instead by means of neo-Lockean[5] claims for the justice of acquiring title to property by mixing one's labor with it. I charged that these claims are circular. Since the case against Robert Nozick's neo-Lockeanism is well known,[6] I concentrated on the circularity of Murray Rothbard's and, to a lesser extent, Ayn Rand's arguments. I claimed[7] that both philosophers assume as "natural" what is in question: the appropriateness of valuing an unequal distribution of the means of achieving people's desires.

However,

4. Arguments for the intrinsic value of neither freedom nor private property are what actually motivate most "libertarians." Biographical evidence suggests, for instance, that Nozick, Rand, and Rothbard would not have come up with their neo-Lockean political theories without first having been influenced by the Austrian school of economics, which had produced the argument against the feasibility of an advanced socialist economy. The "libertarians" in effect extended the Mises-Hayek *economic* argument against central planning into an all-encompassing *philosophical* repudiation of any governmental regulatory or redistributive activity. They probably assumed that such a ban would produce a more prosperous and presumably a happier society than was possible under a welfare state. But rather than attempting to show that this was the case, they argued that inviolable private property is *intrinsically* valuable, regardless of its consequences. Rather than legitimating laissez-faire on the empirical basis of the actual workings of capitalism, they turned to a priori arguments from the evil that supposedly inheres in restricting freedom or property rights.

5. Inasmuch as this a priori approach falls victim to the contradictions

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and circularities sketched above, the hostility to the welfare state displayed by contemporary "libertarians" is unwarranted—unless they return to the original orientation of free-market thought and develop an empirical critique of the modern state that is as far-reaching as a priori "libertarianism" attempted to be. This would mean proving the sort of claims that actually lie behind most a priori "libertarians'" convictions: namely, claims about the good effects—economic, political, social, or cultural—of a society of unfettered private property. I called the pursuit of this consequentialist agenda—regardless of whether, in the end, it sustains laissez-faire conclusions—*postlibertarianism.*

Unfortunately,

6. "Libertarian" rhetoric and neo-Lockean philosophy have such a tight grip on most of those who are in a position to develop and test consequentialist claims for laissez-faire that they squeeze out interest in serious, systemic theoretical and historical inquiry. The first step toward evaluating whether there are any sound reasons to oppose the welfare state, then, is to set aside neo-Lockean "libertarianism." Postlibertarian research would eschew any reliance on the supposedly intrinsic moral superiority or freedom of laissez-faire capitalism, and would instead focus on comparing the empirical effects of laissez-faire and state intervention with an eye toward determining what normative generalizations can be made about either.

7. The recent turn toward postmodernism by some devotees of laissez-faire is a step in the wrong direction. For postmodernism sanctions the reaffirmation of whatever values one's interpretive community happens to cleave to. If postmodern "libertarians" consider themselves to be members of the egalitarian liberal Western interpretive community, their postmodern stance will leave them powerless to offer transcendent criticisms of that community which might propel it back to a stage of liberalism it passed through two centuries ago, when liberals had not yet realized that the negative liberty of the poor is so inferior to that of the rich that there is no equality of liberty in a free-market society. But if, alternatively, postmodern libertarians consider themselves to be bound by the prejudices of the "libertarian" interpretive tradition, then they have no reason to undertake postlibertarian research and theorizing that might establish consequentialist truth-claims for the superiority of laissez-faire to the welfare state, since such claims are rendered superfluous by the "libertarian" interpretive community's privileging of private property as intrinsically valuable. Postmodern "libertarianism" sanctifies the very convictions that need to be questioned if postlibertarian research is to be done.

8. It would hardly matter that postmodernism offers an ineffective route to postlibertarianism if postmodernism were *sound*; but I argued that it is not, or rather, that one cannot possibly accept that it is. To affirm the

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standards of one's interpretive community is to affirm their *validity*; either postmodernism amounts to the truism that truth claims *are in fact* judged by communities on the basis of immanent standards of persuasiveness, or (if it is to have any critical leverage against "modernism") it goes on to say that *there is nothing but* those standards. But the latter position itself makes the transcendent judgment that immanent standards are in truth the only ones. Just like all interpretive communities, postmodernism aspires to Truth. No interpretive community's standards, including those of the postmodern tradition, then, can renounce that aspiration.

9. I wrote that postmodernism may seem plausible despite its self-contradictions because it advances a metanarrative blaming "modernism" for the ills of modernity in a way that accords well with leftist prejudices. But this metanarrative, I suggested, exaggerates the influence of Promethean rationalism on political and social thought and reality—just as Hayek and his postmodern "libertarian" followers, from the other end of the political spectrum, exaggerate the influence of "constructivist rationalism" in order to sustain an anti-socialist metanarrative.

10. In addition to arguing against negative libertarianism in general and "libertarianism," modern and postmodern, in particular, I outlined several of the problems postlibertarian thought is likely to encounter, and I suggested possible solutions. I underscored the role Schumpeter's critique of democratic politics might play in constructing a "slippery-slope" economic argument against the modern state, while observing that on the other hand, democracy may well provide adequate, if crude, means of reversing the state's worst tendencies.[8] The tenuousness of a slippery-slope argument against the democratic welfare state led me to consider the possibility of sociological[9] and political[10] critiques of that state; in the latter instance, I sketched out the paradox that in democracies, the very people who, as community members, are not trusted (for example) to help the poor are, as voters, trusted to elect representatives who will tax the voters to help the poor.[11] I speculated that this paradox may be hidden from sight by irrationally statist popular and elite assumptions, and turned to consider whether these assumptions, and similar moralistic tendencies to look to government for symbolic rather than effective action, might be legitimate targets of postlibertarian critique.[12]

Point 10 contains the heart and soul of a postlibertarian research agenda. Points 1–9 are practically, although not logically, required in order to clear the way for that agenda to proceed. If one is convinced that the welfare state is equivalent to socialism (1), that it is intrinsically unjust (2–6), or that it manifests a "constructivist hubris" (7–9), one will have little reason to inquire into its empirical nature, history, and consequences. One may with some justification remain innocent of such realities if one's normative

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posture toward them is fixed in advance. "Libertarian" beliefs render serious empirical scholarship little more than the decoration of a preordained ideology. This ought to give pause to "libertarian" economists, policy analysts, historians, political scientists, and sociologists.

Machan and the Phenomenology of "Libertarianism"

Tibor Machan's response[13] shows why "libertarian" philosophers, too, should be concerned about the status of their belief system. For Machan displays the schizoid oscillation of "libertarian" philosophy between the consequentialist considerations that actually motivate it and the official doctrine, which in defending the implicit goodness of unmolested private property has no room for consequentialism. Aristotle and Garrett Hardin confirm neither Machan's notion that "individuals make *and thus are justified in holding and using things*" (emphasis added), nor Machan's laissez-faire policy conclusions. Aristotle and Hardin merely suggest that *if and to the extent that* one wishes to promote the conservatory behavior they discuss, one should in those cases rely on private property. But this consequentialist claim demonstrates nothing about the desirability of absolutizing private property or minimizing the state, since there may be many cases where values other than the conservation of property—values such as the preservation of others' lives, liberty, and well-being—outweigh the presumption for private ownership.

To challenge the welfare state, Machan needs consequentialist arguments not about the benefits of private property in general, but about the benefits of *absolute* private property. In the absence of such arguments, most "libertarians" fall back on non-consequentialist Nozickean, Randian, or Rothbardian doctrines in order to maintain the "Right to Private Property." Despite his overwrought invocations of "the demands of scholarship"—which he seems to think include an obligation to discuss every permutation of "libertarian" philosophy ever published, in addition to the three (Nozick, Rothbard, and Rand) I criticized—Machan provides no answers to my criticisms of even those three.

Instead, he outlines a version of "libertarianism" that endorses our freedom to do what is wrong because otherwise, there would be no merit in doing what is right. Machan's unstated premises are that doing what is right is good not because of what it accomplishes, but as a test of character; and that one's character can only be tested if one is free to do evil. Both assumptions are commonplaces in a culture that long faced the dilemma of reconciling evil with God's omnipotence and benevolence.

Machan's approach echoes the heretical solution to this dilemma proposed by the young Augustine, who followed Paul in blaming evil on

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human (negative) freedom, and then answered the question of why God allows negative freedom in the first place by depicting it as being somehow necessary to right action.[14] Even Augustine's mature, orthodox thought implicitly preserved the notion that there must have been something good about negative liberty in order for God to have granted it to us at the price of sin, as well as the consequent notion that the purity of one's inner spirit is more important than the purity of one's actions.

Machan's hidden premises, then, would make sense as part of a Christian political theory. But such a theory would apply its premises consistently. Machan thinks people can only develop the virtue of generosity if they are allowed, by means of inviolable private property rights, to let others starve. Why, then, should they not be allowed to develop the virtue of kindness by allowing them to torture others? Why not let them develop mercy by letting them murder each other? Were Machan trying to sustain a theodicy that justified God's toleration of evil, his endorsement of our right to sin would be understandable. But in a secular context, it is merely a *reductio ad absurdum* not only of "libertarianism," but of the broader negative libertarian right to do what is wrong.

Flew: The Return of Essentialism

I assumed that the case for treating definitions as stipulative rather than substantive had been well enough established (by Karl Popper). But Antony Flew[15] is scandalized that I depart from the "usual understanding" of terms. He seems to think that words somehow seek out and attach themselves to the essences of concepts, resulting in "true" definitions that should not be allowed to change. My view is that definitional changes, handled with care, can illuminate what may otherwise be hidden by old usages. The problem with Flew's essentialist approach is that it tends to reify the unquestioned assumptions that underlie a given set of definitions, making them appear to be real features of the world rather than conceptual artifacts.

The definitions I used were instrumental to the arguments I was trying to advance. The point of these arguments was not that we should adopt new definitions as much as that we should think about our moral commitments in ways that new definitions may facilitate. Flew's response shows that arguing against the "propriety" of new definitions can serve merely to shield one's own assumptions from examination.

It also shows that a sufficiently truculent essentialism can take the offensive against self-examination even in the *absence* of any proposed redefinitions. For instance, as part of the argument summarized in 2b above, I pointed out that Marx, far from being a non-Western or illiberal thinker

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(as Francis Fukuyama portrays him), shared the libertarian and egalitarian premises inherent in non-consequentialistic, or what I called "moralistic," negative libertarianism. Rather than addressing the substance of this argument, Flew seizes on the word "moralism," arguing that Marx believed in no "morality" at all. So Flew pursues the question of whether Marx's view, whatever its content, conforms to the proper definition of "morality,"[16] although this topic is utterly irrelevant to my argument about Marx.

Flew also manages to forget his complaints about the great length of "The New Consensus" in order to lambaste me for having failed to take additional space to set out textual evidence demonstrating that Marx was a libertarian. I welcome the opportunity to do so here, however briefly.

Consider a passage from the Paris manuscripts:

> Man is a species being, not only because in practice and in theory he adopts the species as his object (his own as well as those of other things), but—and this is only another way of expressing it—but also because he treats himself as a *universal* and therefore a free being.
>
> Free, conscious activity is man's species character.
>
> The transcendence of private property is therefore the complete *emancipation* of all human senses and attributes. . . .
>
> Communism is the position as the negation of the negation, and is hence the *actual* phase necessary for the next stage of historical development in the process of human emancipation and recovery.[17]

Communism, according to Marx, will liberate us from economic institutions that make one person's negative freedom antagonistic to that of another. Under communism, my freedom will not be at your expense; we will be positively free, moral "species beings" whose mutual respect can emerge when we are liberated from the need to treat each other unjustly (by violating each other's negative liberty) that characterizes class relationships under capitalism. *Overthrowing capitalism will free us from the economic forces that constrain us from treating each other justly.*

Similarly, Marx argues in *The German Ideology* that treating each other justly requires social relationships that are voluntary rather than coercive, and that such non-exploitative relationships will be possible once we abolish the "natural" separation of self-interest from morality, or negative from positive liberty, that is embodied in the capitalist division of labor:

> As long as a cleavage exists between the particular and the common interest, as long, therefore, as activity is not voluntarily but naturally divided, man's own deed becomes an alien power opposed to him, which enslaves him

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> instead of being controlled by him. For as soon as the distribution of labour comes into being, each man has a particular, exclusive sphere of activity, which is forced upon him and from which he cannot escape. He is a hunter, a fisherman, a shepherd, or a critical critic, and must remain so if he does not want to lose his means of livelihood; while in a communist society, where nobody has one exclusive sphere of activity but can become accomplished in any branch he wishes, society regulates the general production and thus makes it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticise after dinner, just as I have a mind, without ever becoming hunter, fisherman, shepherd or critic. This fixation of social activity, this consolidation of what we ourselves produce into an objective power above us, growing out of our control, thwarting our expectations, bringing to naught our calculations, is one of the chief factors in historical development up till now.
>
> And out of this very contradiction between the interest of the individual and that of the community the latter takes an independent form as the *State*, divorced from the real interests of individual and community. . . . Every class which is struggling for mastery, even when its domination, as is the case with the proletariat, postulates the abolition of the old form of society in its entirety and of domination itself, must first conquer for itself political power in order to represent its interest in turn as the general interest, which in the first moment it is forced to do. Just because individuals seek *only* their particular interest, which for them does not coincide with their communal interest . . . the latter will be imposed on them as an interest "alien" to them, and "independent" of them, as in its turn a particular, peculiar "general" interest; or they themselves must remain within this discord, as in democracy.[18]

In short, there will be no need for communist society to violate negative liberty by coercing the individual, for the associated producers, having been liberated from the economic forces that had prevented them from treating each other justly, will have no interest in mutual domination. Statelessness will follow naturally, as it were, from classlessness. The morality people will freely pursue under communism is the negative freedom of each individual to engage in the productive activity he or she prefers—i.e., to do what he or she will want to do once freed from the constraints of bourgeois society, which make even *unequal* negative freedom contingent on mutual domination.

The evidence for this interpretation of Marx could be multiplied, but there is no need. For not even Flew can avoid noticing Marx's libertarianism in the one text he examines, *The Communist Manifesto*. Flew's first reaction to this unfortunate finding is to adjudge Marx a utopian. I agree (see point 1 above). The issue, however, is not whether Marx was a utopian, but whether his utopia was a libertarian one.

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Flew's second reaction is to point out, in effect, that Marx was not a Popperian interested in falsifying his historical predictions; ergo, he could not really have been seeking human liberation, *no matter what he wrote*. In other words, the fact that Marx wore ideological blinders proves that he was not motivated by the goals of his ideology. It is rather more plausible, I think, to conclude that precisely because of his dogmatic dedication to freedom, Marx succumbed to the temptation to wave aside worries about whether his system would actually achieve it.

Let us now turn to Flew's major complaint, which regards my definition of the term "liberty." He is so occupied with impeaching my departure from the essence of the term (to be found in the British usage of his boyhood) that he overlooks my substantive reason for defining it as I do. My purpose was to show how the "libertarian" ideas that Flew is so determined to take for granted contain self-contradictory premises, since they lead in three unexpectedly anti-"libertarian" directions: (1) paternalistic positive libertarianism; (2) egalitarian, welfare statist negative libertarian liberalism; and (3) the utopian fusion of (1) and (2) in radical, non-paternalistic, non-statist positive libertarianism. The libertarian dimensions of these three positions are only visible if we refuse to continue limiting the word *liberty* to neo-Lockean usages, as if "libertarianism" were somehow more essentially libertarian than the other three versions.

Rather than addressing the point, Flew fulminates against the wording of a brief parenthetical recap of my definition of neo-Lockean "libertarianism," claiming that in this aside I "wantonly, arbitrarily and tendentiously" characterize "libertarianism" as favoring the unlimited satisfaction of an individual's desires, without regard for the rights of others. Flew apparently means to show that while *my* understanding of "libertarianism" is indeed self-contradictory, since it would give some people the Stirnerite right to enslave others in service to the welfare rights of the first group, a "libertarianism" that respects universal *option* rights rather than welfare rights does not suffer from this inconsistency. Flew has it exactly backwards. A Stirnerite libertarianism that placed no limits on individual freedom—i.e., one that conformed to Flew's caricature of my understanding of "libertarianism"—would *not* be internally inconsistent, for it would be non-universalistic, hence consistently inegalitarian. It is the fact that option-rights "libertarianism" of the sort Flew embraces *is* universalistic in imposing its restraints on *everyone's* freedom to, say, kill each other, that leads it into contradiction. For this universalism means trumping any one individual's freedom in favor of the respect due to everyone else. So even option-rights "libertarianism" places a higher value on equality than on liberty; or rather, it places a higher value on equalizing liberty for all than on freeing anyone from all restrictions on his or her liberty (as Stirner

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proposed). Why, then, should we not do as liberals have tended to for the last hundred and fifty years, and take this egalitarianism seriously enough to transform private-property "libertarianism" into social-democratic liberalism? If liberty for all is the goal, why not actualize it via welfare rights?

Contrary to Flew's apparent misapprehension, welfare rights are justified not by a desire to absolutize the freedom of some at others' expense, but by a wish to see negative freedom extended to everyone in equal measure. This impulse originates in the egalitarian premise of the very "libertarianism" Flew advocates. If we may restrict inequalities in some individuals' ability to satisfy their desires (e.g., by prohibiting me from killing you) so as to provide equal option rights to all, then why doesn't the respect for each individual thereby manifested also require us to restrict inequalities in some individuals' ability to satisfy their desires (e.g., by prohibiting me from indulging myself while you starve) so as to provide welfare rights to all?

Flew has three answers. The first is to use the Declaration of Independence to show that classical liberal egalitarianism, "though fundamental," is "extremely limited." I never disagreed; what I argued is that this limitation constitutes a fatal inconsistency.

Flew's second answer is circular, for Ayn Rand's "killer question" ("At whose expense?") assumes away what is at issue: the question of who, by the egalitarian premises of option-rights "libertarianism" itself, is entitled to the ownership of resources. If I am not entitled to possess the property I "own" under capitalism, then to make me disgorge it does not constitute the imposition of an "expense" on me. Third, Flew tries to retreat from egalitarianism by denying that any unearned "respect" is due to Lenin, Hitler, Stalin, Pol Pot and Mao. But unless he would thereby sanction strangling them in their cribs, before they committed any crimes, then he does not really retreat. If even young Hitler was entitled to unearned option rights, then by the same token he was entitled to unearned welfare rights.

So much for Flew on point 2b, according to which "libertarian" premises entail social-democratic liberalism. On 2a, regarding positive liberty, Flew is satisfied to speculate about what "unusual meaning" of "liberty" I must have in mind rather than referring directly to my specification of that meaning. Flew persuades himself that I *must* be referring to the Leninist "liberty" of obeying the collectivity. But it is *negative* libertarianism, of the sort Flew defends (i.e., the kind that respects the rights of others), that identifies the moral interests of the individual with those of the collective—i.e., with other equally valuable individuals. What *positive* libertarianism asks is not whether one should extend freedom to others, but

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whether one is free if he or she fails to do *whatever* is good. The content of that good is completely immaterial; it can indeed be a negative libertarian good, leading to an egalitarian identification with the collectivity, as in Rousseau's doctrine of the general will or Marx's vision of "species beings." But the content of the good can just as easily be Flew's "dutiful, domestic decencies." The point is that, *given* that some ethic is valuable, we are not free in any valuable sense if we fail to adhere to that ethic.

Rather than warning darkly that by my reasoning, "compulsion in the name of true, positive freedom" might be justified, Flew (like Narveson, who assumes that paternalism is so obviously off-limits that it must pose a "problem" for any view that implies it) might have noticed that I admitted the paternalist possibility openly *and explained how it follows from libertarian assumptions.*[19] In any case, it surely does not suffice, as a reply to the argument that positive freedom is justified on libertarian premises, to object that positive libertarianism might lead to paternalism—when what is in question is the very issue of whether, by their own premises, negative libertarians are right in *opposing* paternalism.

Finally, Flew accuses me of a dogmatic insistence that there *must exist* a consequentialist case against the welfare state that will sustain the sweeping antigovernment posture now defended by abstract "libertarianism." As with *The Communist Manifesto*, Flew then faithfully transcribes a passage from "The New Consensus" that directly contradicts his accusation: "*If* consequentialist neoliberalism is to replace 'libertarianism' in grounding a generalized opposition to the welfare state . . ." (emphasis original). No further rebuttal is needed than the quoted, italicized conditional.

What about Flew's question, "What is *dogmatic* about deploying a mass of empirical studies in support of a general mistrust" of the welfare state? It all depends on what one bases that mistrust on. I wrote that it is dogmatic to ground a general opposition to (not "mistrust" of) government action on miscellaneous studies of its ineffectiveness or destructiveness if one has no "overall theory of what is inherently inefficient or destructive about intervention," for this would mean inducing a sweeping generalization from what might well be inadequate evidence. That is not, however, the problem with Flew's position, for Flew's general mistrust of government action *is* grounded on such an overall theory. Unfortunately, this theory holds that the welfare state is *intrinsically* destructive, based on unsound, a priori "libertarian" arguments against our moral responsibilities to each other, *regardless* of the practical capacity of the state to carry out such responsibilities. For him to defend his a priori mistrust by citing a posteriori studies smacks of propagandism, but that is not the same thing as dogmatism.

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Narveson's Negative Freedom

Jan Narveson's[20] attempt to fix "correct" definitions, while conducted with all the care and civility that are missing from Flew's, similarly fails to appreciate my purpose in using such terms as "positive libertarianism." My intention was not to mirror the terminology of analytic philosophers, but to persuade liberals to reexamine their commitment to the intrinsic value of liberty, and to persuade the "classical liberal" subset of liberals to reexamine their commitment to the intrinsic value of absolute private property. This, not some independent merit of the definitions of words, is what is at stake. I'm sure Narveson will think I'm crazy, but for all his commonsensical disavowal of anything so "highfalutin" as essences, his fixation on definitions rather than on the assumptions underpinning them seems like essentialism to me.

His determination to "get the definitions right" deprives Narveson of the distance necessary to gain perspective on what the definitions may be hiding. Thus, in his initial description of negative libertarianism as a matter of who should "have authority" over whom and what, Narveson is right on target. Another way of putting it would be to say that libertarian liberalism is so concerned with *who* has authority that it neglects *what* the authority is used for. But since for him this is merely a matter of the *definition* of liberty, he does not recognize that there is a substantive problem with this libertarian *moral authoritarianism*. The negative libertarian definition of freedom sees no farther than the issue of ensuring that nobody but the individual has authority over one's life. But why would an individual *want* this authority if someone else's authority would be beneficial? Having gained my negative freedom, why should I take pride in my self-rule if I exercise it unwisely? Indeed, if I govern myself according to compulsions and delusions, in what sense do I truly have authority over myself?

The positive libertarian, morally *un*authoritarian alternative is, contrary to Flew's and Narveson's animadversions, by far the *better* established usage. In reality it is Flew and Narveson who, by accepting the modern characterization of "liberty" purely in terms of the distribution of moral authority, are advancing an Orwellian "persuasive definition"—which would be all right if it illuminated anything, but not if it narrows our perceptions of what is involved in making moral decisions.

In Augustinian Christianity, there were three kinds of liberty: what has been called "natural freedom," or freedom of the will; "circumstantial freedom," or freedom from barriers to realizing one's desires; and "acquired freedom," the freedom of a Christian "to live as one ought, the freedom to do the morally good."[21] This last form of freedom, "positive liberty" in my

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terminology, was by far the most important, and was, unlike the second or negative form of freedom, considered invaluable in its own right—even though Augustine, trapped by Pauline theological imperatives, also laid the groundwork for the modern apotheosis of negative liberty as an end in itself. If we look even farther back than Augustine, it is, as Narveson points out, probably in Socrates' view that one always seeks to do the good that we can find the origins of the stance Flew finds so "flagrantly" at odds with the common sense of the twentieth century, and Narveson thinks so "bizarre." For if our aims constitute the good for us, and if we fail to achieve these aims, it must be because something (original sin in Augustinian theology, ignorance in Socratic philosophy) stops us from doing so. Liberation from that something is the only form of freedom worth caring about: why else would one want to be free than to be able to do what is right?

This long-standing positive libertarian view illuminates moral choice by calling attention to considerations of the good on which choice must—implicitly or explicitly—be based. Only relatively recently has our view been restricted to questions of authority, which liberals answer in favor of the arbitrary sovereignty of the individual. In response, the positive libertarian asks why we should sanction the commission of evil by granting arbitrary power to anyone, including the individual.

Narveson comes very close to asking the same question when he complains that positive freedom is empty, since it does not say what is right—only saying that we are free when we do *whatever* is right. The same charge of emptiness is the one positive libertarianism makes against negative libertarianism, since the latter leaves entirely open the question of what people should do with the authority they are granted over their individual realms. However, nothing about positive libertarianism prevents us from going on to inquire into what is right—and, indeed, positive libertarianism *demands* that we so inquire, since it evaluates our actions not according to who authorized them, but according to whether they are right or wrong. It is far different with negative libertarianism, which not only leaves the question of values open, but, by sanctifying any (non-coercive) answer to it chosen by an individual, reduces all answers to arbitrary preferences among "neutral" options. (Were the options not neutral, it would not be intrinsically wrong to interfere with the individual's "right" to choose among them.) Contrary to Narveson's contention, then, negative libertarianism is not a "substantive normative theory" at all, but is a repudiation of all norms save that of the goodness of the individual's so-called realm of "moral" freedom, where we may do "whatever we please."

Although it may boggle the modern mind, the positive libertarian

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view does, as Narveson suspects, militate against granting any *intrinsic* value to "neutral" zones of "moral freedom." For positive libertarianism is founded on the recognition that evaluating alternatives is not an option we can do without, but is incumbent on us as choosing beings. Making choices is the one thing we *cannot* choose not to do. Why not, then, label as "moralities" the ultimate criteria—whatever they may be, and no matter how inarticulate or inconsistent they are—that we use in making these choices?

Would this yield Narveson's moral "totalitarianism"? Although "totalism" might be a less pejorative term, the answer is yes. Any self-conscious human being who is true to his or her experience will admit, I think, that at bottom, he or she never makes a completely arbitrary decision. Thus, although we are trained to treat matters of "taste" as morally arbitrary, we do think about appropriate ways of deciding even them. *Should* we flip a coin? *Should* we indulge a craving? *Should* we try something new? Each of these decisionmaking criteria implies a certain view of what is good. The first criterion suggests that the decision is not worth agonizing over, presumably because, in the interest of some higher good (say, a life not obsessed with trivia), it is acceptable to leave this moral decision to chance and risk being wrong. The second declares that satisfying the urgings that happen to issue from the tastes peculiar to one's contingent background and life history is a good thing, implying that feelings of pleasure are at least a part of what is good. The third reflects the idea that it is good to try to transcend our background and life history, in the interest, perhaps, of adding complexity to our experiences. Each of these criteria can, therefore, be seen as moral. If Narveson sees the reign of morality over all aspects of life as "totalitarian," it is probably because as a liberal, he equates "freedom" with arbitrary decision making.

When Narveson protests that moral "totalitarianism" conflates moral "values" with frivolous or aesthetic or miscellaneous "values," he assumes that the latter three categories must have actual referents because they capture something essential about the term "values." This essentialism begs the question I am asking. The modern separation of aesthetic and cultural from "moral" values is an artifact of the liberal logic I dispute. So, for that matter, is the notion that what separates moral decisions from non-moral ones is the distinction between other-regarding and self-regarding actions. So, too, is the idea that "moral" values are to be cordoned off as matters of "high-flown intuition . . . occupying a separate realm from our mundane interests." And so, most transparently of all, is the distinction between strong (required) and weak (allowed) senses of "right action." To say, as Narveson does, that blurring these various distinctions "confuses" matters or rests on "mistaken" definitions is to represent purely concep-

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tual, theory-laden distinctions as if they were actual features of the world. This is to fail to notice the assumptions on which these liberal distinctions and definitions rest.

I am asking *why* we should value our right to do whatever we want (as long as it is only "weakly" wrong). It is no answer at all to assert, as Narveson does repeatedly, that we just *do* value it—as if, rather than being a recent and far from unanimous posture, negative libertarianism (and a negative libertarianism of a grossly self-absorbed variety) is an inevitable feature of human existence. If anything, it is the modern liberal categories Narveson defends that "bludgeon" people into accepting his position by foreclosing the questioning of his assumptions through definitional fiat.

Challenging liberal definitions by viewing morality as encompassing all our choices does not mean, as Narveson suggests, that everything we do should be done from the *motive* of being "moral," i.e. that choosing our ice cream must be an agonizingly earnest, Kantian process. That, again, is just the kind of thinking I dispute. Why not allow that instead of being a "fancy," high-flown motive, morality can be seen as an existential aspect of human life, a necessary concomitant of the choice-making situation in which we find ourselves? As such, it would inhere even in choices to do fun or interesting or trivial things, or to pursue friendship or beauty. This should be unremarkable to any reader of what is properly called Aristotle's *Ethics*—any reader, that is, who is willing to drop the notion that "current-day" definitions of morality are somehow "truer" than Aristotle's "totalitarian" one.

As Narveson realizes, and as I have already indicated, positive libertarianism in one sense raises empirical claims about moral psychology; yet more fundamentally, they are claims about moral logic. For regardless of how we perceive the motives of our choices, positive libertarianism does not allow that we could make a choice that is truly amoral, any more than that we are capable of genuine relativism or nihilism (see below): not because we are credulous or overconfident about our access to moral truth, but because we *must* act, and that *requires* us to (at least implicitly) evaluate alternatives. Mine are, in short, claims about the human problem situation. It is perhaps a failure to distinguish the logical from the psychological dimensions of our situation that has allowed Socrates' view to be dismissed as implausible.

Even on the psychological level, though, it is not as implausible as it may first seem. To say that all my choices require that in some way, no matter how tentative or vague, I decide what it is "right" for me to do does not mean that I think my every choice is right on every level, or even that I consciously deliberate about many choices. We often run on automatic pilot; we often have conflicting feelings that result in guilt over the choices

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we make; we often change our minds after choosing, again leading to guilt. There is also, obviously, great conflict between the norms we accept upon reflection and the self-interested excuses that motivate many of our choices, and it is often easier to remember the former *after* we choose than it is to keep them in mind at the crucial moment. Again, that even the most "immoral" people make excuses for their lapses and that "amoral" people are cheerfully oblivious to the suffering of others suggest that the tautology I am advancing rings psychologically true: even those who are immoral and amoral seem to need to convince themselves that what they do is not "really" *wrong*. Still, we should keep in mind that positive libertarianism is primarily a logical, not a psychological doctrine.

Against positive libertarianism, Narveson mobilizes only his dogged insistence that *that's simply not what "morality" means*. No doubt the appeal of his view lies in the uncertainty about morality that follows from moral pluralism. Once a single religion no longer legitimates a single morality, who is to say that one person's morality is any better than another's? In light of the conflicting versions of objective morality, one is tempted to abandon the notion of objective morality altogether, retreating to all the liberal categories—the aesthetic, the trivial, the self-interested—which imply that the authority liberalism grants individuals is not *moral* authority at all.

The problem liberalism thus tries to evade is very real: What is right? But difficult as it is, the question *cannot* be evaded. One answers it every time one makes a choice, for at that instant one effectively concludes that that choice is (objectively) right for any person finding herself in precisely the same situation. More demanding views of the objectivity of morality, e.g., the Platonic notion of a correspondence between right choices and Forms of the Good, can be rejected without altering the fact that if I do x rather than y, I judge x to be *better* under the circumstances, and thus objectively *right*.

Systems of morality answer the question of what is right in given circumstances by starting, unavoidably, with axioms that make claims about intrinsically good ends. It is in the nature of axioms that they cannot be justified, so selecting which end to prize axiomatically is the hardest choice of all; there is nothing anyone can say that makes it easy. My positive libertarian objection to libertarian liberalism is that by selecting "freedom to choose" as its intrinsically valuable starting point, it pushes the *actual* decision criterion into the unexaminable oblivion of the individual's "given preferences," sanctioning both moral irresponsibility and immoral choices. Narveson demonstrates the self-deception involved when he appeals to "general judgments of what makes one's life a good one" in order to explain why we should embrace his "libertarian" social contract.

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These general judgments dictate that we choose the "the plow over the sword": the peace of negative liberty over the war of conflicting paternalisms. But these judgments, he must hasten to add, do not constitute moral decisions that we are effectively imposing on others. Rather, they reflect our non-moral "personal values." Yet aren't values that answer the question of what sort of life is good the ultimate in moral judgments? Aren't they, indeed, axiomatic judgments about the *summum bonum*?

Narveson cannot abide this understanding of morality, for if it is accepted, then "whenever our personal values differ, our morals differ too," and paternalism would follow as each of us tried to enforce our *summum bonum* on everyone else. But does Narveson avoid this outcome? Imposing the good of civil peace on everyone, even the warlike, means imposing a moral judgment on everyone, even if it is done under the guise of non-moral "personal values." The question is not whether we can avoid making and imposing axiomatic moral judgments, but whether we should adopt a definition of morality that obscures what those judgments are.

There is, however, a different way to justify toleration: by openly making the moral judgment that civil peace is valuable enough to justify abandoning efforts to enforce lesser values by means of the sword. This is the consequentialist approach. Narveson, in order to avoid taking it, offers two contradictory reasons for opposing paternalism. First: paternalism, by leading to civil warfare, violates the "personal value" of peace. But as we have just seen, only by making the choice of peace a putatively non-moral judgment can Narveson obscure the fact that by banning enforced paternalism, his contract is imposing a (peaceful) paternalistic moral judgment on (violent) paternalists. And obscure this he must, since imposing the ethic of peace contradicts his second argument against paternalism: that paternalism is wrong because it would impose moral judgments of uncertain merit on people with different ethics. Isn't the value of peace a moral judgment of uncertain merit? The other phenomenon with which we have thus far been concerned, Narveson's shrinking down of the definition of "morality" so that it does not encompass the end achieved by the social contract, is supposed to allow him to escape that question. Only the mechanism—promise-keeping—that enforces the contract is to count as moral; all the formalistic liberal distinctions between moral interpersonal relations and neutral personal matters follow. Negative libertarianism, Q.E.D.

But why *not* evaluate the morality of the end toward which the contract aims? Why not frankly call "moral" our judgment that the evils of war outweigh the potential gains likely to flow from trying to institute the good—whatever we think it is—violently? This sort of openly moral consequentialism might lead, in our day, to comparative studies of other

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real-world choices, like that between the welfare state and laissez-faire. Instead, Narveson's "personal values" evasion turns these choices, like the choice in favor of toleration, into questions of *who decides* (answer: contracting individuals) rather than of *what is decided*, rendering postlibertarian studies unnecessary.

Spooked by the difficulty of knowing whose moral judgments can be trusted, Narveson must make toleration itself into an arbitrary selection from among putatively non-moral personal values. But if that is acceptable, then why not get rid of "morality" entirely and view all choices, including whether to kill people for pleasure, as matters of "taste"? By denying the moral status of the values that legitimate the contract, Narveson comes close to doing this. It is not at all clear why he doesn't withdraw the label of morality from the contract as well as the ends it serves so that it, too, is seen merely as a matter of arbitrary preference.

The point is not that Narveson's position results in nihilism or relativism and that, wanting to reject such unsavory conclusions, we should reject his position. Rather, the point is that Narveson's position is unsound because neither nihilism nor relativism are *possible*: I must still act, no matter how skeptical I am of my ability to discern valid moral criteria, and so I must choose one criterion or another. That's all that is required to make me a moral "absolutist," once we view morality not as a Platonic Form or a Kantian attitude, but as an inescapable aspect of being human. Since human action means doing one thing rather than another, neutrality between choices is literally impossible. The relativist only *pretends* neutrality between her own criteria and others'. The nihilist only *pretends* that he uses no criteria at all; but even a coin toss is a judgment about the right way to determine how to act, a judgment that rests on a criterion of some sort. Similarly, Narveson's contract pretends to be skeptical of moral judgments, but it relies on the premise that the rationally self-interested choice of peace is *good* and thus *should not* be resisted (despite his effort to clothe this *ought* in the language of "facts" about what just plain matters to "us").

What, then, does Narveson mean by rational self-interest? It cannot be what makes people happy, or he would show some interest in investigating what that is. Instead, it is whatever people may want to do, whether it makes them happy or not. So his axiom is that people *should* do . . . whatever they want to do. This merely pushes the question back a level. What should they want to do?

Narveson scoffs at this question: surely every sane person knows what he or she wants? If you don't, you should lie down for a while, or see a psychiatrist![22] Never mind that "what one should want" used to be the province of philosophers (like Narveson); what is even more striking is the

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determinism that characterizes Narveson's understanding of our wants. Our wants are just "there"—and it could hardly be otherwise. For our wants, which the economist knows as our "preferences," serve as the hidden basis of all the human decisions that, if left in plain sight, would undermine the negative libertarian shrinkage of morality. Reversing the order suggested by positive libertarian definitions, the negative libertarian is driven to treat our choices as if they were chosen *for* us by our "bottom-level, underlying preferences," rather than chosen *by* us, if only implicitly, when we form those preferences.[23] Otherwise we would have to recognize that we must select some preferences over others, and that we can generate preferences that aren't already "there," and that accordingly it is simply a counsel of complacent self-deception to make "whatever we want" our ultimate end.

The fact is that we have evolved into creatures who have the power to choose what to "want," and nothing can relieve us of that power. This situation was obscured for millennia by the assumption that God had automatic normative authority over us, and especially by the assumption that what God commanded was for us to suppress our natural drives. That made "morality" seem like a high-flown matter indeed, and one that, just as in Narveson's portrayal, conflicted with mundane desires. The irony is that the automatic legitimation of our desires by negative libertarianism came about through the sanctification of The Individual—an atomized version of the same God who had originally tried to suppress those desires. Monotheism may previously have made it seem unproblematic that what was moral was to do whatever *God* wanted; but the certitude attending this judgment was famously unwarranted. Just because God commands something, after all, does not make doing it right—at least without the premise that whatever He commands is right.[24] The same is true of the authority of the individual.

Narveson seems to think that in pointing this out, I am trying to resurrect the uniformity that Christianity once imposed on people's beliefs. Not so. My point is, on the contrary, that positive libertarianism provides a better understanding of the morally pluralist world in which we find ourselves. I am saying that we should own up to the moral choices that ground and grow out of moral disunity. Why is pluralism better than trying to enforce paternalism? And given pluralism, what is the right thing to do? Erecting a new moral authority, the freely contracting individual, to replace God answers neither question adequately. The individual still faces the question of what to choose to do (a question God, too, would have faced). Positive libertarianism seeks to recognize this fact, repudiating all idolatries of authority by means of an open recognition that we each, inescapably, choose our moral axioms, but that this does not necessarily

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sanctify them. If, even before God "died," His existence actually would have solved no moral problems, then neither is anything accomplished by disaggregating his arbitrary authority down to the individual level. To sanction the atomization of authority as *intrinsically* just is to perpetuate the unwarranted notion that we can beg off making moral decisions in favor of assigning the "right" to make them to some sovereign whose decisions are intrinsically good, *no matter what the decisions are.*

Narveson, however, claims *not* to value others' freedom as intrinsically good. He doesn't even know what such highfalutin language would mean. By eschewing traditional natural-rights arguments, Narveson portrays his libertarianism as a non-metaphysical, down-to-earth affair having no truck with "intrinsic" qualities or with any implicit altruism or egalitarianism. In this way he tries to regress not only from positive to negative libertarianism, but from negative liberalism to "libertarianism."

The key move is Narveson's claim that it behooves a "rational" person to limit her liberty so that it does not infringe on the equal liberty of others—if everyone else will agree to reciprocate. Narveson thus appears to justify negative against positive libertarianism by asserting that the purpose of action is to do what is rational rather than what is right; and to justify "libertarianism" against social-democratic liberalism by asserting that one leaves others alone for rationally self-interested reasons, not because one recognizes their equal moral worth. Individual freedom for all is justified not as an end in itself, but as a means to the end of a self-validating rational self-interest.

A positive libertarian would dispute whether rational self-interest is indeed self-validating, arguing that it only seems to be so by virtue of the liberal view of morality, which hides the choices that go into the self-interested preferences our "reason" tries to satisfy. If "rational self-interest" means enslavement to determining desires, a social contract based on it is not "free" in any valuable sense.

But what about Narveson's denial that he grants others their negative freedom out of respect for them?

Narveson's "Libertarianism"

To Narveson, we respect each other's rights not because we care about each other, but because we *don't.*

Narveson has drunk so deeply from Hobbesian springs that he is more intoxicated than his master. He thinks he can motivate us to sign the social contract by virtue of the sheer reasonability of acting so as to secure our wants, just as a football player in pursuit of a touchdown "automatically" tries to run toward the end zone. This purely instrumentalist conception

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of rationality requires that the end toward which the individual's calculations are directed, his self-interest, must be an unquestionable datum; and that, of course, is just how Narveson treats it—as if we somehow *found ourselves* perpetually in a football game where our purposes were self-evident.

Hobbes knew better: it was not freedom to do whatever one finds oneself wanting to do, but the preservation of one's life, that was his recommended goal. (Hence the tremendous differences between his political conclusions and Narveson's.) Unlike Narveson's goal, Hobbes's is obviously conditioned on a moral judgment about what is worthwhile—a judgment not all that inconsistent with Aristotle's recognition of the need to eat before exercising the virtues. A large part of Hobbes's project was to convince people that they should *change* their moral judgments so that self-preservation would overpower various other motives.[25] But Narveson falls for Hobbes's faux repudiation of any *summum bonum,* a repudiation which, taken as seriously as Narveson takes it, would render his contractors clueless as to what it is that their compact is trying to secure.[26] Has Narveson never faced a *conflict* of desires, "interests," or values? In such a situation—which faces us every time we make a choice, such as what sort of social contract to sign—Hobbes offers advice; Narveson offers a platitude. Only the stereotypically self-indulgent modern Self—goosed into "normality" by means of psychoanalytic insights into its "bottom-level, underlying preferences"—could deceive itself into thinking that "what we want" is the answer rather than the question.

Narveson's call to self-indulgence would not have motivated seventeenth-century religious enthusiasts to lay down their arms; instead, it would have dictated that they war against heretics, since that was their "preference." To be sure, this is not such a great problem now, at least in the consumerist First World. Narveson's troubles are not over, though. How can he get everyone to agree to let him enjoy the consumption level of a First-World university professor when so many people lack anywhere near Narveson's means to satisfy *their* self-interested desires? The very idea of a social contract requires some approximation of an equal distribution of whatever is valuable in the contractors' world; otherwise not everyone has a reason to sign on. This is the condition Hobbes tried to meet by arguing that, as the dangers of the state of nature affected everyone equally, everyone would benefit from the safety offered by Leviathan.[27] Similarly, for Rawls's social contract to command universal assent, the betterment of the least advantaged is required. How can Narveson avoid a similar denouement, with its egalitarian ramifications? Although he does not place intrinsic value on the other contractors, it would appear that he will have to treat them *as if* he did if he wants their cooperation. Unless the

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dispossessed are given entitlements, they will feel free to *take* them. Egalitarianism, Q.E.D.

Narveson may not want to help someone else thrive by supplying her with a prosthetic limb, or by paying a National Health Service to supply one. But for the very same reason that he must refrain from stealing from her if he wants her, in turn, to allow him his negative liberty, he'll also have to fork over payments for at least the minimal goods that will keep her alive—no matter whose fault it is that she lacks a limb—if he is to avoid her vengeance. Narveson may be willing to forego welfare rights and live "on his own," but why should anyone else be willing to let him?

Narveson glides over this point far too quickly. It is "obvious," he thinks, "why any particular individual would want" "libertarian" liberty. What if the individual is starving? Unemployed? Catastrophically ill and without funds? Disabled or elderly and poor? Or even unable to afford a college education? It is more than conceivable that people in such situations would be willing to do without "libertarianism," since it is precisely their demands for less of what Narveson calls liberty that have helped create the welfare state.[28] Narveson asserts that "it is not at all obvious why [any particular individual] should be willing to accept an involuntarily imposed requirement that he supply, at his own expense, what . . . positive rights demand on the part of those others." But the reason people would be willing to supply such aid to each other exactly parallels the reason that would, according to Narveson, bind people to the "libertarian" contract: it would be "just better for them" to know that, should misfortune strike, they would be entitled to aid from others—which they could only secure, in turn, by promising to deliver such aid if others need it.

What Narveson calls a positive right to a "doing" does not actualize positive liberty. Rather, it actualizes egalitarian negative liberty—liberal social democracy. What Narveson's positive/negative rights dichotomy does accomplish, though, is to define egalitarian negative liberty out of existence by assuming in advance what social democrats question: that one has a right to the property that one "owns" under laissez-faire capitalism. For the terms of the dichotomy between doings and non-doings entail that we start from a "libertarian" status quo and treat departures from it, "doings," as "redistributions" or "takings." But if I were not already entitled to "my" million dollars a year—which is what social democrats question—it would make no sense to accuse them of asserting a "positive" obligation against me by seeking to apply a portion of the million to poor relief. Again, by lying asleep atop "my" assets I am "not doing" anything harmful to others only if I am entitled to own those assets in the first place. If I am *not* entitled to them, then by failing to surrender them to someone in need I am as actively harming him as if I had stolen his food. A contrac-

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tarianism that, like Narveson's, is premised on this dichotomy takes for granted that, before signing a social-democratic compact, I must somehow be persuaded to give up "my property" for the benefit of others. But those who would like to possess "my" property in order to satisfy their desires—which, in Narveson's book, is a perfectly legitimate attitude on their part—have no reason to grant that that property is rightfully mine in the first place.[29]

At some points, Narveson seems to backslide from his untenable inegalitarianism, such as when he asserts that "morals is about socially valid rules," i.e. agreed-upon rules. This attempt to privilege the "rational" contract, which is supposedly agreeable to all, as *therefore* uniquely moral appears to vest some special validity in what people agree to; the same is true of Narveson's repeated invocation of the need to *convince* people to give "their" money to those in need. This is standard-issue "libertarianism" without the metaphysics. Underlying it is an egalitarianism as potent as any belief in universal natural rights, leading—in the absence of countervailing consequentialist barriers—to the liberal conclusion that our fellows should be not only respected and convinced rather than coerced, but also allowed the means to achieve the realization of their freely chosen goals.

None of this is to mention that if we adhere to Narveson's version of "rational self-interest," then without a Leviathan state watching our every move, nobody will have reason to obey the contract (even if they did agree to it and would like to see it work) when they think they can get away with breaking it. My one little transgression, after all, won't drive us back from civil peace to the war of all against all; so nobody need worry about the effects on anyone but herself of her instrumentally rational extracontractual attempts to satisfy whatever desires she happens to have. But this, notoriously, undermines the possibility that a night-watchman state could enforce a social contract. The *aggregation* of self-interested transgressions does have the effect of traducing the social contract, even though no single crime does; yet even realizing this will not keep a rationally self-interested contractor from engaging in criminal behavior, since one crime will not tip the balance against civil peace. So if we pursue the self-interest Narveson commends, we shall have to be placed under round-the-clock surveillance. Unless we do respect other human beings, there is no reason why, when we can get away with it, we should consider ourselves bound by any compact. Narveson's solution to this problem, which amounts to imploring us to act "on principle," cannot short-circuit our "rationally self-interested" reasons not to do so.

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"Libertarianism" vs. Consequentialism

Three final matters before leaving Narveson.

First, Marxian "radical" libertarianism is not laissez-faire negative "libertarianism." The portions of Narveson's reply dealing with radical libertarianism are therefore moot.

Second, I seem to have misled Narveson (and Flew) by switching from the contrast between teleology and deontology in Part I of "The New Consensus" to that between consequentialism and non-consequentialism in Part II.[30] After writing Part I I realized that one could be the sort of "deontological" libertarian I criticized, who values negative freedom as an end in itself, while also being a teleologist. For one could favor policies aimed toward the *telos* of a society of maximum negative freedom, allowing that in the meantime some impingements upon freedom might be acceptable as means to that end. This posture would still be subject to my criticism that negative freedom has no intrinsic value. So, I realized, teleology is not necessarily what I am advocating.

Calling my position "consequentialism" seemed to address this problem by emphasizing that to place intrinsic value on negative freedom contradicts the purpose of free action, which is to achieve a value—a consequence—even if not to achieve an overall *telos*. But "consequentialism" implies incorrectly that the value achieved by an action cannot be something inherent in the action itself. There is nothing in positive libertarianism that precludes Kant's position, that the proper end of an action is to conform to certain rules, regardless of the consequences of doing so. (It is another thing entirely to say, as negative libertarians do, that actions are good regardless of any end, merely by virtue of being uncoerced.) So "non-consequentialism" does not really capture the negative libertarian position much better than "deontology" does. (This is not because of the sort of objection Flew makes to the former term, which misses the point entirely. Since, as he admits, consequences are the purposes of action, why does he defend actions regardless of their consequences, merely by virtue of their exhibiting the negative freedom of the actor?)

I erred in failing to see that positive libertarianism entails not a general opposition to deontological (or non-consequentialist) morality, but a particular opposition to the predominant modern version of deontology, negative libertarianism. Only that version of deontology undercuts the whole point of morality—to make choices—by rendering any "free" choice good.

I agree with Narveson that there is no sharp distinction between deontological and consequentialist morality; even the latter requires that one assign *intrinsic* value to some *consequence* or another. Positive libertarianism

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is not so much consequentialist as it is opposed to non-consequentialist *negative libertarianism.*

The real usefulness of the term "consequentialism" comes out not in the contrast between positive and negative liberty, but in that between egalitarian liberalism and laissez-faire "libertarianism." For once we realize the anti-"libertarian" ramifications of the egalitarian premises of "libertarianism," we have two options. We can renounce egalitarianism and all ideas of equal individual rights and opportunities, in favor of Stirnerism or some other inegalitarian doctrine. Or we can draw on our empathy for other human beings, based on our recognition of their similarity to us, in order to retain our egalitarian commitment, while at the same time we retrieve what is valuable in "libertarianism": its willingness to question whether government action is the best way to achieve the *consequence* egalitarians should seek: people's well-being. That means not just one's own well-being, *pace* Narveson, but that of as many people as possible. To assume that one's own well-being is all that "matters," i.e. all that should matter, is to be a Stirnerite. (Nor is it "rational" to assume that the only people who should matter to me are whichever people I happen to care about at the moment, as if that, too, were not a moral choice I could change.)

If you are a Stirnerite, you will not likely have much interest in knowing anything about the systemic consequences of the welfare state for people's well-being; all you will want to know is, "What does the state cost *me*?" This narrow sort of consequentialism is the only kind I can infer is justified by Narveson's version of "libertarianism," which like some free-market scholarship seems to hold that by showing that the state costs the taxpayer more money than private arrangements would, one clinches the case against the state. In this Narveson assumes that self-interest (and pecuniary self-interest at that) is all that counts; but we have already seen that no "libertarian" contract could be founded on such a basis.

Not that the fate of consequentialism in the hands of rights-based "libertarians" is better: even a self-absorbed Narvesonian consequentialism can play no role in natural-rights doctrine. Only those who reject both quasi-Stirnerite self-absorption and traditional "libertarian" deontology will have much reason to undertake a research program that examines the systemic effects of state action. Since calling this a "utilitarian" research program would have its own problems—utilitarians, like liberals, tend to be unnecessarily deterministic and conservative in their understanding of happiness—we seem stuck with the term "consequentialism" unless somebody has a better suggestion.

Finally, Narveson is right to say that my use of the term "government intervention" presupposes private property to intervene in. But one need not presuppose that private property is *legitimate* in order to study the

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effects of intervening in it—nor need one preordain that if it is legitimate, it is for intrinsic rather than consequentialist reasons—so the point is irrelevant.

McCloskey: Exorcising Modernism

In light of what I have said thus far about the status of definitions, I can hardly insist that Donald McCloskey[31] is wrong to define postmodernism in such a way as to exclude "Franco-German anxieties." I won't argue with his stipulation that his "metamodern" version of postmodernism has nothing to do with what most people mean by the latter term. However, while pretending no expertise in these matters, my "Postmodernism vs. Postlibertarianism" asked, on the basis of the evidence presented in our special issue on postmodernism, questions that seem applicable to McCloskey's metamodernism, too. I do not see that McCloskey has laid them to rest.

First, I asked "whether postmodernism is not inherently conservative" because it privileges one's interpretive community rather than recognizing the inevitability of one's belief that one's picture of the world is true, independently of opinion—a belief that contains the potential for radically challenging the opinions of one's community.[32] McCloskey answers that "to admit that our only standard is our interpretive community is not to surrender to *arbitrary standards*, but to standards. There are no standards outside those of an interpretive community." But I explicitly conceded that "truths are indeed judged only by interpretive communities on the basis of persuasiveness." I went on to say, however, that "in so judging, those communities, and their members, *must* think they are doing something more: striving after (fallible, yet transcendent) Truth. Otherwise, they would have no criteria of what counts as persuasive—and this is *impossible*: contradictory immanent positions *must* be chosen between."[33] McCloskey's only response to this, my central argument, is to express incomprehension. I'll try to say it more clearly. When the interpretive community consisting of you and me finds a claim persuasive, we are (implicitly or explicitly) saying that we think that claim is *true*. So McCloskey's argument that all truth-claims must be judged on grounds of persuasiveness by interpretive communities is not inconsistent with the inescapability of believing that the truth-claims of one's interpretive community have validity that transcends their persuasiveness. Indeed, for a community to find a claim persuasive *means* that it attributes transcendent validity to it. But this is what allows people to disagree with judgments of their community, on the grounds that *they* do *not* find the communal truth-claim to be persuasive (i.e. valid). Inasmuch as postmodernism privileges prevailing communal interpretations, it is conservative: it denies the

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challengeability of communal interpretations by denying the validity of the criterion (truth) to which such challenges must appeal.

McCloskey's apotheosis of the immanent rhetorical standards of interpretive communities conflicts with the transcendent aspirations of philosophy. Like Stanley Fish, McCloskey wants to proclaim that rhetoric wins this conflict. Such a proclamation of victory, however, would be a statement concerning the transcendent truth of the matter: "Since there is no transcendent truth," it would declare, "the discursive community of transendent philosophers is *wrong* in saying that there is." Such a statement contradicts itself.[34] McCloskey responds that even if he contradicts himself by making a transcendent philosophical claim, philosophers contradict themselves by using rhetoric. But I do not claim that rhetoric is avoidable, so in using rhetoric I do not contradict myself. McCloskey claims that transcendent philosophical truth-claims *are* avoidable; it *does*, therefore, damage his case to find him making such claims. Philosophers do not necessarily oppose rhetoric; they simply say that rhetoric is not all there is. It is McCloskey who opposes philosophy, contending that rhetoric *is* all there is.

Second, I asked whether postmodernism would be plausible without a "modernist" opponent, against whose scientistic errors postmodernists overreact. (Descartes usually plays the "modernist" heavy.) McCloskey's response only makes the question more urgent. He claims that I "try to hitch [my] minimal statism to the rigidities of modernism in the style of the Vienna Circle, the modernist movement in architecture, and anglophone analytic philosophy circa 1935"; that I "believe that whatever does not fit the formulas of French rationalism or British empiricism must be irrational"; that "Friedman's modernism" somehow precludes "using all the evidence," including direct testimony and self-understanding; and, by implication, that I endorse "modernist economics," with its overemphasis on tests of statistical significance and its overreliance on regression analysis. He also lumps me with "philosophical conservatives" who fear that social order depends on ahistorical norms. Not one of these claims is true, nor is a single one substantiated by my "Postmodernism vs. Postlibertarianism."[35] That article may have been compressed, but it did spell out my viewpoint in some detail, and my viewpoint bears no resemblance to the one McCloskey caricatures. Why has he answered somebody else's arguments instead of mine?

My hypothesis is that he only finds metamodernism compelling when it is opposed to an equally implausible extreme. And it seems clear that to McCloskey, that extreme is economic positivism, against which he has waged a well-known and important battle. It is not the case, however, that everyone who believes that there is more to truth than rhetoric must go on

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to insist that anything that isn't statistically significant is meaningless. I certainly don't. Following Hayek, I fully accept that "the facts of the social sciences"[36] necessarily involve interpretations of people's thoughts and cannot be reduced to statistics. Following Popper, I recognize that our interpretations are conjectural and should be held fallibilistically. Nevertheless, what we are trying to understand is *the truth* about the relationship between people's thoughts and their actions, adducing facts that can be investigated scientifically, not just rhetoric that the interpreter can somehow believe has no reference to an investigator-independent reality. I feel no more need than Hayek did to conclude, from the inevitability of interpretation in social science, that there is no such thing as Truth. So McCloskey is, in this case at least, attacking a positivist straw man.

Further evidence for my hypothesis about the dependence of metamodernism in particular and postmodernism in general on "modernist" straw figures is the fact that McCloskey defends the Continental postmodernists' notion that "Promethean modernism" is to blame for the evils of modernity. For while McCloskey's arguments against positivism do not apply to anything I said, they do apply very clearly to this modernist bogeyman.

According to the myth of Promethean modernism, the dominant tendency of the centuries since Descartes has been the "illusion that by means of theory we can manipulate and control human affairs however we desire."[37] (Even if this were true, would it entail that we should abandon attempts to understand the truth about human affairs, or instead that we should try to understand it *better*, so as not fall into Promethean error again?) I asked whether this myth isn't itself a hypothesis making a claim about the factual truth of modern history—but one that places its political assumptions beyond rational criticism. The closest thing to an answer is McCloskey's assertion that "most members of a speech community who have lived through communism and anti-communism, Vietnam and the expansion of the modern state" would accept the accuracy of the Promethean myth. But (even if *this* assertion were true) so what? Just because an interpretive community believes something to be the case does not make it so.

McCloskey taxes me for failing to say why the myth of Promethean modernism is dubious. I did not feel obliged to do so because the writer who invoked this myth in our pages, Gary Madison, provided no evidence that Promethean modernism played any significant role in causing the evils for which he and McCloskey blame it. I cannot imagine what evidence (i.e. facts supporting their interpretation of the truth of the matter) for these extraordinary claims Madison or McCloskey would adduce, so I can hardly be expected to rebut it. I can only say that my interpreta-

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tion of the phenomena in question makes me highly skeptical of a Promethean explanation of them. How many economists—how many sane people of any sort—ever thought that we could control human affairs "*however* we desire"? More importantly, how many communists, cold warriors, and welfare statists needed anything more than firm *moral* convictions to prompt them to do what they did?

The myth of Promethean modernism may *seem* credible to scholars like Madison and McCloskey under the following scenario.

Advocates of free-market economics, like Madison, McCloskey, and Hayek, have long been in a decided minority that opposes both socialism and the social-democratic megastate. There are at least two ways they might explain their minority status.

First, they might assume that people (1) *disagree* with free-market economics (2) for *methodological* reasons. They might find this assumption plausible because it applies to many of their interlocutors (i.e. non-free market economists). Hayek seems to be a case in point. In *The Counter-Revolution of Science*, he attributes modern socialism to a "constructivistic rationalism" that he traces to such figures as Saint-Simon and Comte.[38] This may well explain the origins of the pretensions of such socialist economists as Oskar Lange, against whom Hayek was ranged in the debate over socialist calculation.

But Hayek never distinguishes between the socialism of his economist opponents and socialism *tout court*; so he blames the latter on the same "planning mentality"[39] to which he attributes the former. Much of his career was given over to the unfortunate pursuit of this conflation, which resulted in a version of modern intellectual history that is virtually unrecognizable to anyone who sympathetically undertakes to understand socialism and like ideas.[40] Hayek gives no signs of recognizing that Saint-Simonian and Comtean methodology merely gave a peculiarly historicist form to what motivated them—their altruistic moral ideas; and his scattered comments on the likes of Marx, Hegel and Rousseau similarly display a complete misunderstanding of what the left (broadly speaking) was trying to do.[41] I recall no instance in which he shows that constructivistic rationalism actually caused many or any people to become socialists—highly unlikely, given the libertarian moral aspirations and perceived class self-interest that were predominant. Rather, he shows that some of their views were *compatible* with his "constructivism." But to attribute any importance to this compatibility assumes that people should be *prima facie* opposed to deliberate attempts to change society, such that if they do *not* oppose these attempts, something—like constructivist rationalism—must have predisposed them toward "social engineering."

The other way of explaining the marginal status of free-market eco-

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nomics is, in my view, far more plausible. Rather than seeing it as a matter of disagreement, let alone methodological disagreement, it can be seen as a near-total divergence of focus. Economists, far from being Promethean, are trained to think that every action has a cost, that tradeoffs are always being made, and that therefore having everything is *not* possible. So their focus is naturally on the *feasibility* of proposed social reforms, and they tend to place the burden of proof on the reformer. Given this focus, advocacy of central planning of the sort Hayek encountered among economists in the calculation debate may indeed need explaining. But the economist's worldview is quite alien to that of most people, including most social, political, moral, and cultural theorists, most politicians—and most socialists. The economic point of view is, to most people, *counterintuitive*, so they naturally tend to overlook the feasibility of proposed solutions, focusing instead on identifying problems. Of course, even the notion of "social problems" could not have gained currency before the ceaseless changes wrought by *modernity* (not *modernism*) removed the veneer of divine or timeless ordination from tradition. Rapid social change made it possible to think about rectifying conditions that no longer seemed to be sacred, or at least unchangeable. But such thoughts do not require the mindless "constructivist" notion that what is not consciously planned is *ipso facto* undesirable, as Hayek claims;[42] and to define oneself in opposition to such a notion, as Hayek tended to do in his later years, risks degenerating into an equally mindless attachment to what is *not* consciously planned.

To be sure (see point 10 on moralism), the focus on moral *intentions* that has survived from pre-modern ethical deliberation (and is evident in Machan's version of "libertarianism") is inadequate to modern debates over social problems, since it leaves little room for considerations of what solutions will be workable, and whether those solutions must come from the state (see point 10 on statism). Bringing those considerations to the fore is the job of the public-policy economist. But when non-economists favor public action to solve social problems, it is not usually because they disagree with economic arguments—let alone because they disagree for "constructivistic" methodological reasons. Rather, they are simply asking different questions than those that come naturally to economists, so they do not even *consider* the answers economists provide.

Now on the rare occasions when non-economists *do* consider questions of feasibility rather than morality, you can sometimes catch them making "constructivistic" statements about the need to "plan." This is because unless one has been steeped in free-market economics, one has little reason to suspect that government planning will not work. It would be most unreasonable, however, to view free-market suspicions of government as

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the intuitively plausible default option that it is reasonable to expect from people, such that whenever they fail to see the virtues of the unplanned market, some "constructivistic hubris" must be at work.

So we need not assume, with McCloskey, that any Prometheanism was required in order for people to try to (a) stop ruinous business cycles, (b) alleviate poverty, (c) root out "subversives," (d) stop Communism in Vietnam, or even (e) establish a communist society. For McCloskey to assert that such twentieth-century phenomena were caused by modernist philosophy suggests that he is so convinced of particular arguments against one or more of these forms of collective action—e.g., the economic calculation argument against (e), or rational expectations theory or the Austrian theory of the trade cycle against (a)—that he has forgotten that most people have not even heard of such arguments. *That* is the most economical explanation for why so few people agree with him about the futility of "social engineering." Changing this situation requires developing (and popularizing) convincing arguments against government intervention, not campaigning against Cartesian epistemology.

Toward Postlibertarianism

Toward that end, I welcome the agreement of as distinguished an economic historian as McCloskey on the need for more empirical studies. But I wonder what he thinks those studies will be about, if not the truth. And I suspect that postmodernism will prove to be a distraction from seeking it.

For one thing, it plays to Austrian economists' overdeveloped tendency to spend time trying to persuade the rest of their discipline to adopt their methodology, rather than using their methodology to investigate reality. For another, it suggests that there *is* no reality that can serve as a check on an interpretive community's theories, encouraging the inclination of both Austrian and neoclassical economists to theorize about what reality *must* be like without investigating whether the facts of the social sciences bear their theories out. Third, it encourages ideological conservatism by privileging the values—whether leftist or "libertarian"—of one's pre-existing tradition. I have seen at first hand how the resulting complacency can discourage the self-questioning and self-criticism that are essential to serious and original scholarship of the sort that is so desperately needed. And finally, it leads to a sterile, self-satisfied misunderstanding of non-free-market opinion as springing from a largely mythical "constructivist rationalism." One can already hear free-marketeers isolating themselves from any sympathetic understanding of the culture around them by misconstruing Clintonian technocracy as resting on a historically constructed and

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otherwise inexplicable positive belief in planning, rather than on the quite reasonable *prima facie* intuition that planning is better than "chaos."

I suspect that McCloskey and I have few differences in how we see the world: neither of us doubts that there is such a thing, that all statements about it are not equally valid, and that empirical investigation and careful reasoning can reveal which are better and which, worse. I doubt, though, that McCloskey's postmodernist friends share such views (at least overtly), and I can only conclude that he has been driven into an alliance with them because he assumes that in their direction lies the only alternative to the narrow positivism of most contemporary economics. "Postmodernism vs. Postlibertarianism" attempted to offer a way out of this Hobson's choice; I regret that I was not persuasive enough to show McCloskey that postlibertarianism bears little resemblance to his positivist target.

I see no reason why, in order to pursue the consequentialist research that McCloskey and I agree should displace "libertarianism," we must pretend to reject the idea of transcendent truth. And I still fear that doing so will only provide new cover behind which the prejudices of the "libertarian" interpretive community will remain unchallenged.

NOTES

1. Jeffrey Friedman, "The New Consensus: I. The Fukuyama Thesis," CRITICAL REVIEW 3, nos. 3–4 (Summer-Fall 1989): 373–410; id., "The New Consensus: II. The Democratic Welfare State," CRITICAL REVIEW 4, no. 4 (Fall 1990): 633–708; id., "Postmodernism vs. Postlibertarianism," CRITICAL REVIEW 5, no. 2 (Spring 1991): 145–58.
2. Since writing "The New Consensus" and "Postmodernism vs. Postlibertarianism" my attention has been drawn to Israel M. Kirzner's "The Perils of Regulation: A Market-Process Approach," in his *Discovery and the Capitalist Process* (Chicago: University of Chicago Press, 1985). There Kirzner sets out a variety of arguments against government regulatory interference in market economies, derived from the Mises-Hayek argument against the possibility of socialist economic calculation. As Kirzner notes, however, the empirical magnitude of the costs of regulation that he identifies are unknown. The loss of economic efficiency due to regulation may be negligible, catastrophic, or somewhere in between; it is up to serious Austrian-oriented researchers to investigate the matter.
3. Edmund Burke, *Reflections on the Revolution in France*, ed. J. G. A. Pocock (Indianapolis: Hackett, 1987), 8. Unfortunately, Burke precedes this wise remark by asserting that "liberty in the abstract may be classed amongst the blessings of mankind" (7).
4. Max Stirner, *The Ego and His Own* (New York: Libertarian Book Club,

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1963 [1844]): "I do not demand any right, therefore I need not recognize any either. What I can get by force I get by force, and what I do not get by force I have no right to, nor do I give myself airs, or consolation, with my imprescriptible right" (210). "Of what concern to me is the common weal? The common weal as such is not *my weal*, but only the furthest extremity of *self-renunciation*. . . . Liberty of the *people* is not *my* liberty!" (214).

5. Perhaps I should say "pseudo-Lockean," because there is no reason to think Locke intended to put any "libertarian" limits on the power of governments over private property. He needed to discuss property in the first place in order to counter Robert Filmer's claim that kings owned the property of their realms and could command political obedience on that basis. Locke retorted that God gave the world to mankind in common (*Second Treatise of Government*, sec. 1). Had Locke then failed to advance the doctrine of labor-mixing (ch. 5), he would have been saddled with communism; this would have been as far from his political purposes, and even more damaging to them, as justifying *inviolable* private property. But after invoking labor-mixing in order to establish private property rights, he claimed that when civil society was established, people "annexed" their property to the community (sec. 120), and that the community gained the right to tax (sec. 140) and regulate (sec. 120) property. Cf. Thomas A. Horne, *Property Rights and Poverty: Political Argument in Britain, 1605–1834* (Chapel Hill: University of North Carolina Press, 1990), ch. 2, for a similar view.
6. See Jeffrey Paul, ed., *Reading Nozick: Essays on Anarchy, State, and Utopia* (Totowa, N. J.: Rowman & Littlefield, 1981), particularly the essays by Thomas Nagel, Onora O'Neill, and Cheyney Ryan.
7. Friedman, "The Democratic Welfare State," 664–6.
8. Ibid., 666–76.
9. Ibid., 678.
10. Ibid., 676–80.
11. Ibid., 680–83.
12. Ibid., 683–90.
13. Tibor R. Machan, "The Right to Private Property: Reply to Friedman," CRITICAL REVIEW 6, no. 1 (Winter 1992): 97–106.
14. Augustine, *On Free Choice of the Will*, tr. Anna S. Benjamin and L. H. Hackstaff (New York: Macmillan, 1964), bk. 2, sec. 6: "Man . . . must have free will, *without which he cannot act rightly*" (emph. added). This position was later repudiated by Augustine as being semi-Pelagian *avant la lettre* in allowing for human initiative in attaining positive freedom. But even the mature Augustine had to keep negative libertarianism alive, even while denying that it could be instrumental to the good, since otherwise evil would have to be blamed on God. So he simply asserted, in *On the Spirit and the Letter*, that "man's righteousness must be attributed to the operation of God, *although not taking place without man's will*" (ch. 7, emph. added).

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This juxtaposition of a free will that leads to sin with God's omnipotence suggests that God cares so much less about whether we do what is right than that we do it *freely* that He tolerates all the world's evils in order to give us the requisite natural (negative) freedom. This may be the source of the fetishism of conscientiousness manifested in Machan's "libertarianism" and also in radical (positive) libertarianism: see "The New Consensus," 654–6.

15. Antony Flew, "Dissent from 'The New Consensus': Reply to Friedman," CRITICAL REVIEW 6, no. 1 (Winter 1992): 83–96.
16. In the first part of the essay to which Flew is responding ("The Fukuyama Thesis," 410n72), I cited Kai Nielsen's discussion of Marx's morality in our pages (Nielsen, "Marx and the Enlightenment Project," CRITICAL REVIEW 2, no. 4 [Fall 1988]: 59–75), but Flew seems not to have read that part of my essay (cf. n30 below). A recent discussion of the moral dimension of Marxism with a survey of the literature is Joseph McCarney, "Marx and Justice Again," *New Left Review* no. 195 (September/October 1992): 29–36. Cf. Frank Roosevelt, "Marx and Market Socialism," *Dissent*, Fall 1992: 511–18, esp. 515.
17. Robert Tucker, ed., *The Marx-Engels Reader*, 2nd ed. (New York: Norton, 1978), 75, 76, 87, 93.
18. Ibid., 160–61.
19. Friedman, "The Democratic Welfare State," 640.
20. Jan Narveson, "Libertarianism, Postlibertarianism, and the Welfare State: Reply to Friedman," CRITICAL REVIEW 6, no. 1 (Winter 1992): 45–82.
21. Hugh McSorley, *Luther: Right or Wrong? An Ecumenical-Theological Study of Luther's Major Work, "The Bondage of the Will"* (New York: Newman Press, 1969), 27.
22. Cf. Jeffrey Friedman, "Cultural Theory vs. Cultural History," CRITICAL REVIEW 5, no. 3 (Summer 1991): 330.
23. I am not saying that as a matter of fact our preferences are all under conscious control. I am saying, though, that as choice-making beings we (cannot help thinking that we) are able (in theory at least) to identify, if not explain, the preferences we derive from cultural influences, and (cannot help thinking that we) can, in theory at least, choose to disregard them once they are identified.
24. In reality things were more complicated. Christianity appealed not to God's authority to legitimate His commands, but to His power to reward us with what we *really* want: eternal beatitude. We achieve this self-interested goal by suppressing sin-inducing desires that falsely represent themselves as self-interested. Still, by distinguishing between true and false interests, Christianity was able to generate the notion of positive freedom, which depends on there being a distinction between right and wrong choices. But by identifying our true interests with God's authority, Christianity may also have preordained that post-Christian

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culture would conflate our true interests with individual authority, trading the distinction between true and false interests and the concomitant power to choose to act morally for a determinism exercised over us by morally indistinguishable, given desires among which there can be no moral choice.

25. Cf. Mary G. Dietz, "Hobbes's Subject as Citizen," in id., ed., *Thomas Hobbes and Political Theory* (Lawrence: University Press of Kansas, 1990), 91–119.
26. Actually, in *Leviathan*, ch. 11, Hobbes argues only that there is no *summum bonum* like those that are "spoken of in the Books of the old Morall Philosophers," rather than that there is no *summum bonum* at all. The context shows that Hobbes means that there is no good that results in the cessation of desire—not that he is not himself proposing what is good for human beings to pursue. "Their End," he writes of men in the state of nature (ch. 13), "is principally their owne conservation, and sometimes their delectation only," while in civil society, "the finall Cause, End, or Designe of men (who naturally love Liberty, and Dominion over others,) in the introduction of that restraint upon themselves, (in which wee see them live in Commonwealths,) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of Warre, which is necessarily consequent (as hath been shown) to the naturall passions of men" (ch. 17).
27. Hobbes, *Leviathan*, ch. 13: "The weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himselfe."
28. Don Herzog, "Gimme that Old-Time Religion," CRITICAL REVIEW 4, nos. 1–2 (Winter-Spring 1990): 74–85, at 83–4, makes this point, among others, with more wit and economy than I command.
29. See Herzog, 83.
30. For Flew to chide me for showing "no sign of being aware of" the teleology/deontology dichotomy is to show no sign of having read the first part of the essay he is criticizing.
31. Donald N. McCloskey, "Minimal Statism and Metamodernism: Reply to Friedman," CRITICAL REVIEW 6, no. 1 (Winter 1992): 107–112.
32. Friedman, "Postmodernism vs. Postlibertarianism," 150.
33. Ibid., 152.
34. Contrast David Roochnik, "Stanley Fish and the Old Quarrel between Rhetoric and Philosophy," CRITICAL REVIEW 5, no. 2 (Spring 1991): 225–46.
35. Indeed, in "The Democratic Welfare State," 674, I called for "a weak, interpretive (rather than positivistic)" appropriation of public choice theory.
36. F. A. Hayek, "The Facts of the Social Sciences," in id., *Individualism and Economic Order* (Chicago: University of Chicago Press, 1948), 57–76.

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37. G. B. Madison, "The Practice of Theory, the Theory of Practice," CRITICAL REVIEW 5, no. 2 (Spring 1991): 193.
38. F. A. Hayek, *The Counter-Revolution of Science: Studies on the Abuse of Reason*, 2nd ed. (Indianapolis: Liberty Press, 1979).
39. Ibid., 179–80.
40. This project culminated in his last book, *The Fatal Conceit: The Errors of Socialism* (Chicago: University of Chicago Press, 1988), which begins by making a series of claims about the evolutionary origins of market society, followed by the assertions that "socialists take a different view of these matters," and that they "assume that . . . people . . . must also be able to design an even better and more gratifying system" (6–7). The first assertion seems to me false: for the most part, socialists do not even think about the origins of market society, whether in an evolutionary way or in any other; when they do (Marx), their speculation is often quite evolutionary. The second assertion conflates constructivism as a *prima facie* valid assumption with constructivism as an assumption that is so unfathomable to a free-market economist that it needs to be explained historically. But socialists cannot be condemned for some "rationalistic hubris" just because they haven't thought about the ramifications Hayek draws from the good features of market institutions that evolved spontaneously rather than having been planned consciously. For if socialists' assumption that people can design a better (more just) system is *prima facie* valid, then they have no burden to prove that they can design such a society, and their failure to discharge this non-existent burden need not be explained historically. Rather, the burden of proving the conservative ramifications of "spontaneous order" falls on Hayek, and if anything needs historical explanation, it is the question of why he assumes that the burden falls elsewhere. (The text's discussion of Hayek's background in economics is my attempt at such an explanation.) By the same token, it is a *prima facie* valid assumption that any contemplated human action might succeed, until some reason to the contrary is offered. So, just as there is no warrant for trying to trace historical roots of the "hubristic" belief that if one tries to cross the street one may reach the other side, there is no reason to explain historically why people who identify social injustices in the status quo then go on to assume that those injustices may be capable of correction. Conversely, if defenders of the welfare state were to claim that it embodies useful qualities by virtue of its social "evolution" and were to accuse its detractors of favoring a "hubristic" rational reshaping of society, surely they would be making an unwarranted assumption about the *prima facie* unreasonableness of their adversaries' viewpoint. This assumption might lead them to idle speculation about what historical factors must be responsible for such absurd views, when in fact what would need to be explained is why the defenders of the status quo were so convinced of its worth that they forgot

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that the burden of proof lay on them once someone had pointed out that the status quo is deficient.

A posthumously published interview with Hayek illustrates his tendency to see intellectual history through the filter of economics. When the interviewer raises the subject of economic methodology, Hayek's response so clearly echoes the anti-constructivist strictures of his work on socialism that it seems obvious that in his mind there is little difference between the two—i.e. that to him, socialism *is* a form of economic methodology:

> The great problem is still a methodological one. . . .
>
> The possibility both of explaining and predicting social phenomena is very much more limited than it is in physics.
>
> Now this dissatisfies the more-ambitious young men. They want to achieve a science which gives the same exactness of prediction and the same power of control as you achieve in the physical sciences. Even if they know they won't do it, they say, "We must try. We ultimately will discover it." When we embark upon this process, we want to achieve a command of social events which is analogous to our command of physical affairs. If they really created a society which was guided by the collective will of the group [Here "they" obviously refers not to economists but to socialists—J.F.], that would just stop the process of intellectual progress.

("The Road from Serfdom: Foreseeing the Fall," 1977 interview with Hayek by Thomas W. Hazlett, *Reason*, July 1992: 28–34, at 31.)

41. As far as I know, the discussion of Hegel and Marx in *The Counter-Revolution of Science* is Hayek's most extensive, but only Marx's philosophy of history is treated, and there in a highly fragmentary way that cites no evidence of Marx's "constructivism." As for Hegel, Hayek admits that he does not understand him (375–6), but excuses himself on the grounds that he need only understand the ideas of Hegel that relate to "the development of the social sciences" (376). But Hegel was not discussing social scientific methodology; he was discussing social morality. To attribute to him the idea that "the growth of the conscious control of his destiny by man is the main content of history" (382) is to misinterpret positive freedom—*moral* control of our destiny—as negative freedom—*instrumentalist* control. By interpreting "reason" in a negative libertarian, instrumentalist fashion where those he studies meant the word in its positive sense, Hayek creates the fiction that they were trying to engineer rather than moralize society. The treatment of Rousseau in *The Fatal Conceit* (49–52) is marred by a similar misunderstanding of "rationalism."
42. Hayek, in *The Counter-Revolution of Science,* 202, characterizes his quarry,

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"the scientistic hubris," as (in large part) "that synthetic spirit which would not recognize sense in anything that had not been deliberately constructed."

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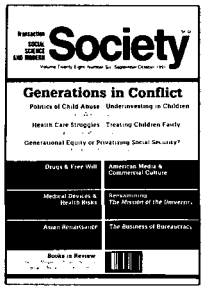

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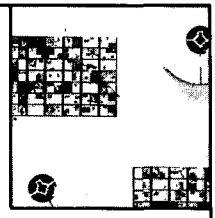

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